HILLARY'S UPSTATE MYTH
MARISA KATZ

JACK ABRAMOFF, THE MOVIE
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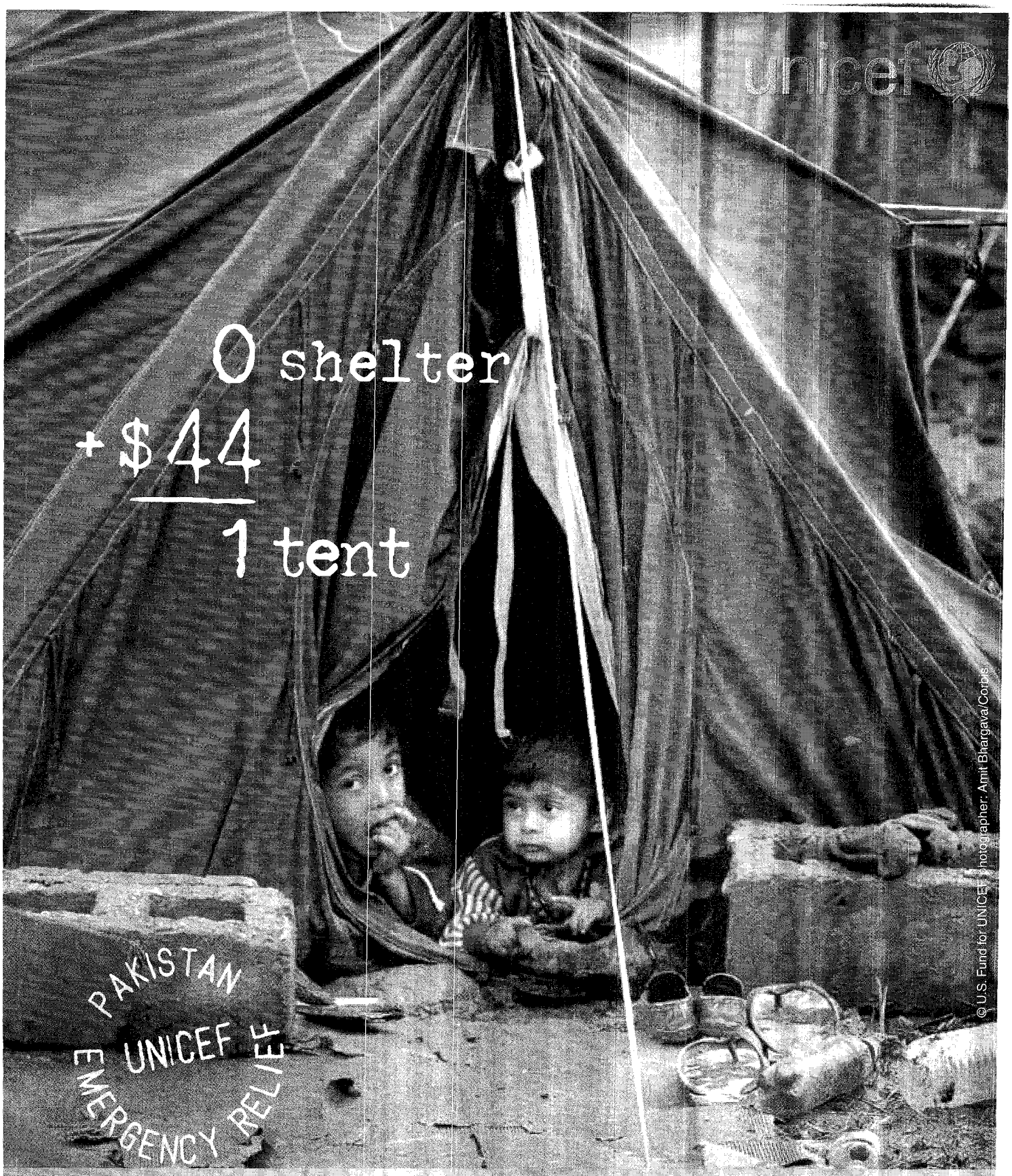

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CORRESPONDENCE

HUMANE SOCIETY

I COMMEND ANDREW SULLIVAN FOR one of the most cogent and thoughtful analyses of why the United States must repudiate torture ("The Abolition of Torture," December 19, 2005). Throughout the history of our nation, even in our darkest hours, our leaders have consistently refused torture as a tactic because they understood that it is antithetical to the values we fight for: freedom and democracy. Presidents from Washington to FDR knew that our Constitution and rule of law are too important to be undermined by the use of torture. Somehow, all this has been lost on the current administration. By allowing torture "sometimes," the White House has allowed for torture to permeate well beyond whatever limited use they may have intended. The Bush administration's ongoing defense of using torture is yet another stark reminder of why it must be replaced. It is dangerous, and it is putting at risk not just the near-term safety of our troops and the success of our operational goals, but also our broader effort to fight terrorism.

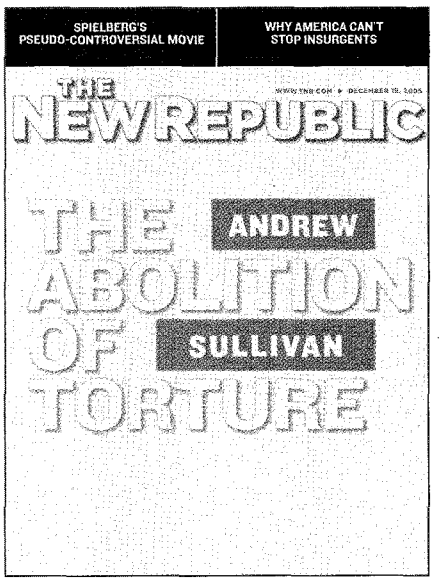
As Sullivan points out, when an American soldier showed up in a foreign town in World War II or other conflicts, civilians knew they would be treated humanely and would be inclined to cooperate with our personnel. Now, potential Iraqi informants would never think of working with Americans collecting intelligence. In the battle to win the hearts and minds of the Muslim world, this administration has damaged our nation's hard-won positive image, our effectiveness on the ground, and our moral authority. This issue is so critically important because it gets to the heart of our nation's credibility and values. The administration is not just wrong; its actions are causing serious and long-term damage to the very fabric of what our nation stands for. I'm pleased that Congress made progress in forcing the adoption of Senator McCain's language banning torture, but it is not until the administration is replaced that we can truly improve our standing in the world and, in turn, successfully fight terrorism.

REPRESENTATIVE ADAM SMITH
Member, U.S. Congress
Washington, D.C.

WHILE I APPLAUD AND PROUDLY second Sullivan's eloquent and principled argument for an unambiguous U.S. policy prohibiting torture, I believe it is naïve to think that an anti-torture policy will keep our foreign enemies—and even some fellow Americans—from making false accusations for propaganda's sake. Sullivan says our "policy of permissible torture has handed Al Qaeda" the chance to undermine America's reputation for "freedom and decency" by "claim[ing] torture regardless of what happens" to its detainees in U.S. custody. I would respectfully suggest that Al Qaeda would make such claims even if the United States were graciously hosting enemy combatants in five-star fashion, replete with massages, room service, and pillow mints. The United States should unequivocally ban torture, but Al Qaeda's false claims will still air widely on Al Jazeera and be swallowed whole by medieval reactionaries in the Muslim world and by anti-American radicals elsewhere.

DARREN MCKINNEY
Washington, D.C.

BRAVO FOR SULLIVAN AND HIS moral clarity and eloquence. But he is far too polite and collegial with Charles Krauthammer. Krauthammer's tightly argued but utterly utopian ideas are best left to debate among excitable men who work at desks. But they should go no further. Krauthammer's refusal to deal with the real consequences of his proposals is appalling and reprehensible. Krauthammer himself might make a scrupulous torturer, applying appropriate techniques under strict conditions, all in exact compliance with his moral science. But, in the hands of ordinary men and women acting under the extraordinary circumstances of war and conflict, it all turns beastly quite fast. Chapter after sad chapter of world history makes this clear. When men and women become perfectly predictable moral beings, we should give Krauthammer a call for advice. Until then, we are left only with history and the best traditions of American democracy as our compass.



TOM LUSSENHOP
Philadelphia, Pennsylvania

DEMAGOGUE FOG

LEON WIESELTIER WRITES THAT THE ability to make others feel overwhelmed is called demagoguery ("Hits," December 19, 2005). Not so. How could you use this term—which refers to cheap and dishonest panderings and appeals to social resentments and prejudices in order to increase one's political power—simply to denigrate a filmmaker whose work you scorn? Unfortunately, demagoguery is alive and well in Washington right now, and your use of the term has the effect of trivializing the real thing.

STEVEN TIGER
Philadelphia, Pennsylvania

LEON WIESELTIER RESPONDS:
The diabolization of Washington is itself a form of demagoguery, but why does

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Steven Tiger think that demagoguery in America is only a political phenomenon? There is nothing more demagogic in the United States than our popular entertainment, not by a long shot. Demagoguery succeeds, after all, because it is enjoyable.

COUNTER REFORMATION

CAROLINE ELKINS SHOULD SAY which counterinsurgency campaigns in the Third World she *does* approve of ("Royal Screwup," December 19, 2005). I suspect, after reading her denunciation of Great Britain's suppression of Mau Mau terrorism (*Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya*) that very few would make her cut. As for Malaya, consider its neighborhood. Are the human rights records of Indonesia, Singapore, Vietnam, and Democratic Kampuchea really to be preferred?

HUGO S. CUNNINGHAM
Boston, Massachusetts

SUPPLY AND OUTMANNED

YOUR EDITORIAL ON IMMIGRATION says, "According to the Labor Department, the economy will add 7.7 million low-skilled, low-wage jobs between 2000 and 2010" ("Resident Evil," December 19, 2005). "Simply put, the law of supply and demand dictates a high volume of illegal immigrants for the foreseeable future." Wouldn't the law of supply and demand dictate that an increase in lower-wage jobs without a corresponding increase in the labor force necessitates *higher* wages for those positions? Doesn't the influx of illegals to work lower-wage jobs depress wages for law-abiding citizens willing to work but not to be exploited, as our unfortunate neighbors to the south allow themselves to be?

JOHN BABIK
Marysville, Ohio

THE EDITORS RESPOND:

John Babik's argument is premised on the idea that we could somehow shut down illegal immigration—a premise our editorial rejects as unrealistic. But, for the sake of a full rebuttal, let's assume ending illegal immigration were feasible. True, wages for many low-skilled jobs would have to increase substantially in order to attract laborers. This is in part because our well-educated, well-trained workforce provides too few workers willing to fill those jobs without an outsized incentive. But it is also because we simply do not have enough workers to fill those spots absent a steady immigration flow. And the increase in labor costs would likely do serious damage to economic growth. Also, this immigration stoppage would come at the cost of militarizing our borders à la North Korea, the economic and political price tag for which would likely do further economic damage.

TAX SHELTER

THE EDITORS WRITE THAT THE Alternative Minimum Tax is "an additional levy once used to ensure that wealthy Americans couldn't use tax shelters and other schemes to escape paying their fair share" ("Tax Evasion," November 21, 2005). Then you conclude that, since it hasn't kept up with inflation, it is starting to hit increasing numbers of middle-income families and must therefore be eliminated. Why? Why not reset the tax—so it once again hits only the original target—and then index it at that level? Why should wealthy people be able to escape the income tax?

EMIL KREIDER
Professor of Economics
Beloit College
Beloit, Wisconsin

CULTURE SHOCK

WHILE I'M HEARTENED THAT "Dominican reggaeton, Fujianese slang, Orthodox Jewish ritual, and hipster fashion" continue to keep it real on Orchard Street, Alec Appelbaum's blithe disregard for the threats to income and cultural diversity in Manhattan border on the naïve ("Street Fair," December 26, 2005). The author states as a given that rent regulation and inclusionary zoning will preserve economic diversity in Manhattan. The New York State Tenants & Neighbors Coalition estimates that nearly 100,000 units of rent-regulated housing were deregulated between 1993 and 2003—a trend that tenant advocates believe has continued unabated since further weakening of rent laws in mid-2003. As for the inclusionary zoning gains Appelbaum cites, with the exception of the Hudson Yards neighborhood on the far West Side and a couple of isolated developments on the Lower East, few Manhattan developments so far have any meaningful affordability requirements at all. Indeed, luxury construction on the Lower East Side and in booming neighborhoods like Tribeca, SoHo, and even Brooklyn's DUMBO continue to benefit from an enormous property tax abatement enacted in the 1970s.

African Americans, Latinos, and middle-income New Yorkers of all kinds are leaving Manhattan in droves—inevitably to set up new Orchard Streets in places like Sunset Park, Morrisania, Astoria, and the South Bronx. Appelbaum is right on one thing: Street life is everything. Unfortunately, the kind of mordant chaos Appelbaum celebrates exists in Manhattan today only on stage sets like the public art competition sponsored by the local Business Improvement District in his article. Soon, to hear the reggaeton he loves, he will have to download it from iTunes like suburban kids everywhere else.

JONATHAN ROSEN
New York, New York

ALEC APPELBAUM RESPONDS:

I invite Jonathan Rosen to the record stores and Chinese restaurants in my neighborhood. Once he acclimates to the crowds, he may redirect his energies toward supporting community-based organizations rather than chastising reporters. There's only one Orchard Street, and it keeps changing. Our job as citizens is to prune it of excess greed and presumption. We can't manipulate shears when we throw up our hands.

LIEBER-SHUN

PETER BEINART IGNORES THE BIGgest reason Democrats are furious about Senator Joe Lieberman: He says and does things that hurt his party ("Both Sides," January 16). His loose-cannon routine goes back at least as far as the Florida recount, when he called for the counting of pro-Bush military ballots, even if they weren't cast in compliance with state law. In recent months, Lieberman has done the worst damage yet with his defense of the Iraq war. He has given the administration cover for lies that got us into the war and its incompetence once the war started. So much cover that President Bush pointedly said, "Senator Lieberman is right" on Iraq. With friends like Lieberman, the Democrats don't need enemies.

PAUL RUSCHMANN
Canton, Michigan

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Shrug Coverage

TRB

FROM ANN ARBOR

IT WAS NOT SO LONG AGO THAT President Bush was bragging about his Medicare reform law, which gives senior citizens the opportunity to buy private insurance that will help pay for their prescriptions: "The days of low-income seniors having to make painful sacrifices to pay for their prescription drugs are now coming to an end." But somebody forgot to tell the old folks in Maine about this legislative miracle. On January 3, two days after the Bush initiative went into effect, the state's assistance hotline logged 18,000 calls. "We had dialysis patients who were not getting medicines, pharmacies on hold for 60-plus minutes, some plans closed for the holiday," a state official told *The Washington Post*. "One man called me—he and his wife were on 15 medications. ... He went in for 15, and he left with one."

And it wasn't just Maine. Since the Bush Medicare drug plan went into effect, according to *The New York Times*, tens and maybe hundreds of thousands of people have shown up at their pharmacies only to learn that their new insurance plans either don't cover their drugs or that the coverage doesn't exist at all. Worse yet, the majority of these people are so-called "dual eligibles," meaning that they are not only old and sick but also poor—in other words, exactly the kind of people who are most dependent on drugs and least able to afford them on their own.

The administration's initial response will be familiar to anyone who recalls the early months of the Iraqi insurgency or the first few days after Hurricane Katrina. "This is going very well," a spokesman at the Center for Medicare and Medicaid Services (CMS) said on January 4, with apparent seriousness. When the difficulties became too widespread for even the Bush administration to ignore, officials fell back on another well-rehearsed excuse: Glitches were inevitable given the nature of the task. "We know there are going to be bumps in the road," another CMS spokesman said. "It's a new program."

Most people probably think this makes sense, since most people think that the government always bungles such massive undertakings anyway. But consider what happened when the Johnson administration rolled out Medicare for the first time in July 1966. Back then, the obstacles were even more daunting than they are today. Rather than simply adding a benefit for a relatively narrow class of services (prescription drugs), introducing Medicare meant establishing an entirely new insurance program in just eleven months. There were concerns about hospital capacity: What if seniors held off on medical treatment until the benefit kicked in and then flooded facilities? There were also racial complications: LBJ had insisted that Medicare refuse payments to hospitals that didn't abide by federal civil rights guidelines. Since many Southern hospitals remained segregated, senior citizens there might have had no place to go.

So what happened on the day that this complex program was implemented? Thousands of senior citizens simply went to the hospital and got the health care they needed. "There were no crises that I remember," says Yale University political scientist Theodore Marmor, who worked in the office overseeing Medicare implementation and went on to write *The Politics of Medicare*, the program's definitive history. Newspaper accounts from the '60s back him up. Under the headline "MEDICARE TAKES OVER EASILY," a *Post* writer described the program's first day as "a smooth transition, undramatic as a bed change." Three weeks later, the *Times* affirmed that "MEDICARE'S START HAS BEEN SMOOTH."

What did Johnson do right that Bush did wrong? Start with the people he put in charge. Today, the man directly responsible for Medicare is Mark McClellan, a physician and former Stanford economist. Though hardly a Michael Brown, McClellan has no prior experience when it comes to implementing social insurance programs. (His predecessor, Tom Scully, left CMS to become a lobbyist almost immediately after the Medicare bill passed.) The man Johnson tapped to run Medicare was Robert Ball, a longtime civil servant who had worked his way up through the Social Security Administration starting in 1939. He and other veterans helped design the program—urging, among other things, that the law take effect in summer, when hospitals would be least crowded.

Another difference between the two administrations is their willingness to take initiative. Last year, experts repeatedly warned the Bush administration that it had inadequate contingency plans in place, culminating in a December Government Accountability Office report that predicted with eerie accuracy exactly what has happened at pharmacies around the country these past two weeks. LBJ's team was far more cautious. Although confident that hospitals could handle any potential surges, it still drew up plans for transferring patients to overflow facilities, even lining up helicopters in Texas to provide speedy transport.

Granted, senior citizens probably need more hand-holding in 2006 than they did in 1966, because the new law channels its drug coverage through private insurance companies from which beneficiaries must choose. But that, too, is a distinction: While Bush talks of "choice" as his plan's greatest virtue, seniors seem bewildered by having to pick from as many as 52 different prescription plans, each one with different premiums, cost-sharing requirements, and lists of drugs covered. By contrast, Johnson administration officials had argued against inundating seniors with such options. "I would not have dreamed of going about this in a way that meant individuals had to choose from among all these possibilities," Ball says today. "I would have expected chaos."

And, from Maine to California, chaos is just what the Bush administration has gotten. This isn't surprising, considering that the administration designed its Medicare plan to serve its ideological agenda—privatizing government services and enriching special interests like the insurance and pharmaceutical industries—rather than senior citizens. The original Medicare law reflects a rather different tradition: the New Deal. Its architects believed that protecting people from economic and medical risk was a job that only a robust and, yes, *big* government could do properly. Of course, that's a pretty unfashionable idea nowadays. But that hardly makes it wrong.

JONATHAN COHN

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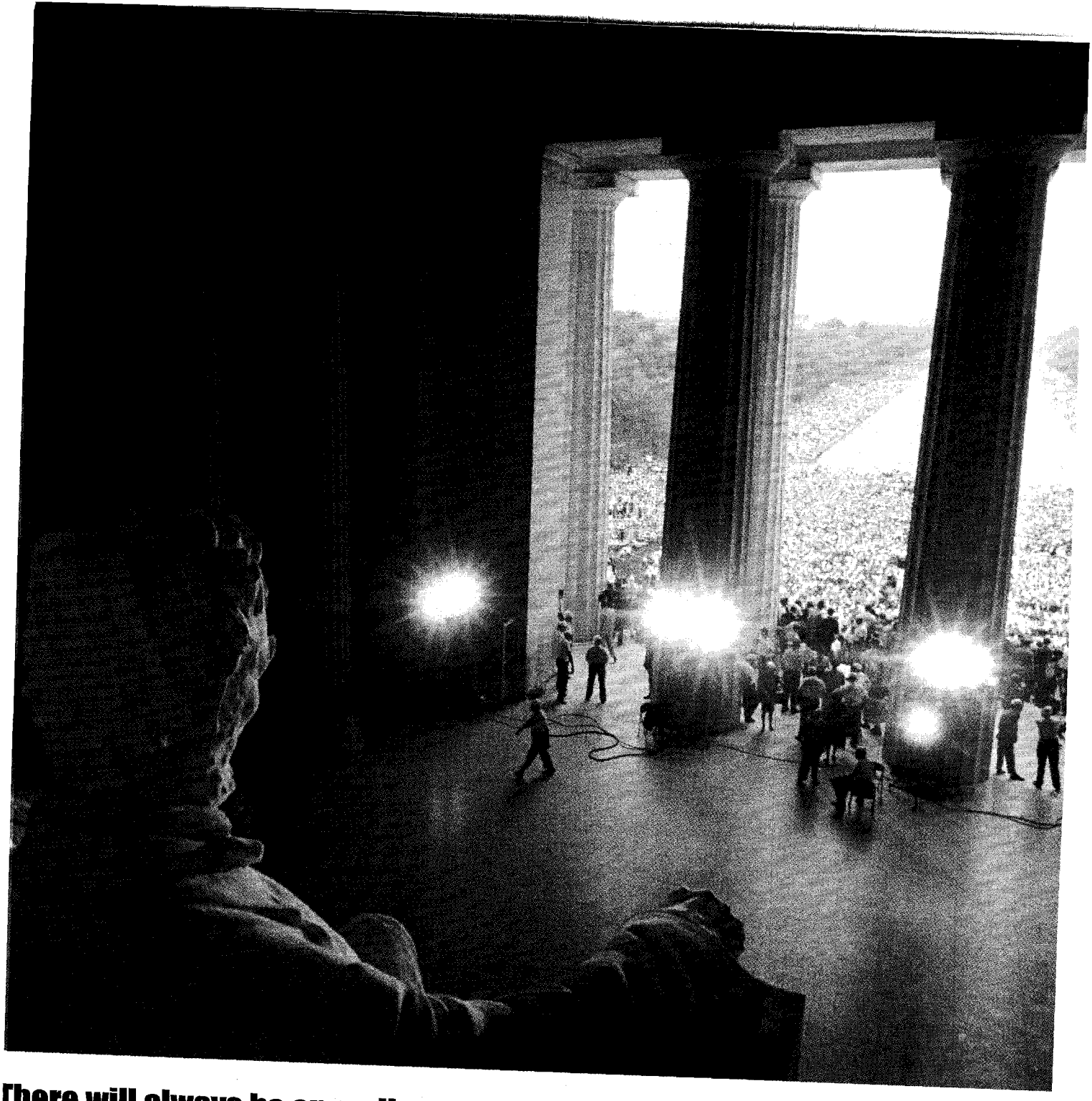

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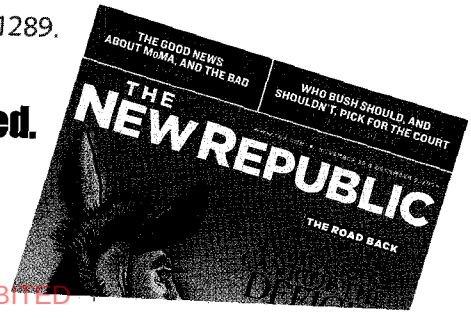

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Restraining Order

IF YOU BELIEVE the statements they made during last week's hearings, Republican and Democratic senators agree that Samuel Alito, President Bush's nominee to replace Supreme Court Justice Sandra Day O'Connor, should be evaluated on the basis of his judicial philosophy—that is, on his general approach to interpreting the Constitution. "Will your judicial philosophy preserve these principles" of "executive power, congressional power, and personal autonomy?" asked Senator Charles Schumer of New York, in a characteristic opening statement. "Or will it erode them?"

Unfortunately, not a single senator followed such questions by articulating a coherent judicial philosophy against which Alito could be measured. Yes, Republicans offered platitudes about "judicial restraint," insisting that the job of judges is to interpret the law, not make it. And yet their model Supreme Court justices are Antonin Scalia and Clarence Thomas, who have voted to strike down more federal laws than any other justices on the Court. Democrats, by the same token, demonize right-wing judges for their conservative activism. But, in their eagerness to overturn state laws with which they disagree—such as those establishing school voucher programs and restricting late-term abortions—they are no more consistent than Republicans in their advocacy of judicial restraint. Indeed, their idea of a compromise candidate at the moment is O'Connor, who firmly believes that the courts, rather than the legislature, should resolve the most contested questions in society—from abortion to presidential elections—and who has voted to strike down more state and federal laws combined than any other justice except for Anthony Kennedy.

THE NEW REPUBLIC, by contrast, does have a consistent and long-standing judicial philosophy. Ever since its founding in the Progressive era, this magazine has championed bipartisan judicial restraint and urged liberal and conservative justices to practice it consistently. Under the guidance of editors like Felix Frankfurter, Learned Hand, and Alexander Bickel, we have argued that judges should play a modest role in U.S. democracy, generally deferring to the judgments of elected legislators and striking down laws only when the constitutional arguments for doing so are clear and convincing. This vision of bipartisan restraint has led TNR to oppose activist Supreme Court decisions on both sides of the political spectrum, from *Roe* v. *Wade* to *Bush* v. *Gore*. And it has led us to support Supreme Court nominees of both Republican and Democratic presidents. During the Clinton era, we enthusiastically championed the candidacies of Ruth Bader Ginsburg and Stephen Breyer, predicting that they would serve as liberal models of restraint. On the Court, Justices Ginsburg and Breyer have surpassed our hopes, voting to strike down fewer state and federal laws than any other justices. And, when Bush nominated Judge John Roberts to be chief justice, we were supportive again, albeit more cautiously. Based on Roberts's judicial record and Senate testimony, we were impressed by the apparent sincerity of his deference to the political branches. Although it is too soon to judge his performance, we hope that Roberts, too, will vindicate our confidence.

Is Samuel Alito committed to judicial restraint? Certainly, he is far from the most activist and intemperate candidate that Bush could have nominated. Unlike judges like Janice Rogers Brown, the radical California libertarian, Alito has impressed his colleagues on the bench as a judge who does not, in all cases, have a results-oriented ideological agenda. His law school classmate Anthony Kronman, the former dean of Yale Law School, testified that Alito had "no political agenda of any kind" and described him as a "lawyer's lawyer." Other colleagues testified about Alito's open-mindedness and devotion to incremental, rather than jarring, change. Moreover, Alito's intellectual ability has been obvious at every stage of his career. Temperament and ability matter a great deal on the bench, and, in the absence of countervailing evidence, they might be enough to convince us that Alito deserves the benefit of the doubt.

But there is countervailing evidence—lots of it. Asked what kind of judicial conservative he is, Alito endorsed the doctrine of inflexible originalism, which says that the Constitution should be strictly interpreted in light of the original understanding of its Framers and ratifiers. Inflexible originalists, such as Clarence Thomas, are willing to uproot a great deal of well-settled precedent and practice—including much of the post–New Deal regulatory state—on the grounds that it is inconsistent with an eighteenth-century understanding of the scope of national power. "I think we should look to the text of the Constitution, and we should look to the meaning that someone would have taken from the text of the Constitution at the time of its adoption," Alito said.

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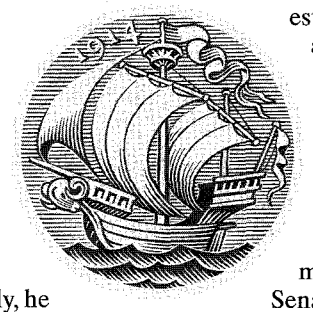
Roberts, by contrast, disavowed originalism, insisting that he does not have an overarching judicial ideology that he wants to impose on every case. Alito's suggestion that "the Constitution itself doesn't change"—and that it contains a fixed meaning that should be applied to changing factual circumstances—suggests that he might join Scalia and Thomas in overturning well-established precedents, regardless of their broad legal and political acceptance or of the practical consequences.

Despite his less-than-reassuring attitude toward precedent, however, we are less concerned than Democratic senators about Alito's feelings on the perennial question of *Roe* v. *Wade*—particularly the semantic differences between the responses of Alito and Roberts. Alito said that *Roe* was an "important precedent of the Supreme Court," while Roberts said that *Roe* was "settled as a precedent of the court." Both refused to embrace it as a "super-precedent" entitled to special respect because it has been reaffirmed by justices appointed by presidents of both parties. Although TNR opposed *Roe* as an example of judicial overreach that cut short a growing (and healthy) debate in state legislatures about abortion, we believe that, since it has been reaffirmed in 38 cases since 1974—as Senator Arlen Specter noted during the hearings—it should not be lightly overturned. What's more, by imposing a Court-sanctioned solution on the states, *Roe* ignited a culture war that obscured many other substantive policy issues; overturning it now would simply repeat that mistake. Fortunately, even if both Roberts and Alito did vote to overturn *Roe*—a prospect that Alito supporters, such as Charles Fried of Harvard Law School, think unlikely—the decision to uphold *Roe* would still be 5–4, and Republicans would need another appointment to allow restrictions on early-term abortion.

More important in our view are the central questions of the confirmation hearings: namely, Alito's views about congressional and executive power. We were especially troubled by Alito's vote to strike down the federal ban on the possession of machine guns, on the grounds that Congress had not offered convincing evidence of a connection between machine-gun possession and interstate commerce. Indeed, in his hearings, Alito emphasized that, in his view, Congress needs to explicitly identify the effects of its laws on interstate commerce for them to pass constitutional muster. Alito reaffirmed his view that the Supreme Court's 1995 decision striking down the federal ban on guns in schools was a constitutional "revolution"—a development he seemed to view as positive. And he refused to say that all of the Supreme Court's Commerce Clause decisions of the past 50 years are "well-settled precedents," allowing only that "most" of them are settled. Showing little of Roberts's emphasis on the importance of judicial deference to Congress, Alito raised fears that he would join Scalia and Thomas in overturning a host of federal laws. After all, many of the cases upholding congressional power during the last 50 years are arguably inconsistent with the original understanding of the Constitution; and, if Alito is willing to deny Congress the power to regulate machine-gun possession, it's not unreasonable to fear that he might deny Congress the right to regulate drug possession or protect the environment.

And then there is executive power. Alito was questioned extensively on his views about the theory of the "unitary executive," which holds that all executive power is vested in the president and cannot be infringed upon by Congress or the courts. Alito had endorsed this theory in the Reagan Justice Department and reaffirmed his support for it as recently as 2000. Perhaps most disturbingly, he did not convincingly explain his enthusiasm, as a Justice Department official, for presidential "signing statements," which an executive can use to record his interpretation of a bill, whether or not that interpretation meshes with the legislature's intent. Bush, for example, is now using a presidential signing statement to argue that the recent congressional ban on torture does not, in fact, prevent the executive from ordering torture in certain circumstances. In a conflict between the president and Congress, nothing in his record suggests that Alito would defer to Congress's explicit wishes. As TNR Legal Affairs Editor Jeffrey Rosen argues this week ("Uncle Sam," page 20), Alito might join advocates of unchecked executive power, such as Thomas, who argue that the president can do whatever he likes in the war on terrorism, despite the opposition of Congress and the lower courts. As the Bush administration's rejection of congressional efforts to restrict domestic surveillance and torture suggests, the prospects of an imperial presidency unrestrained by the courts or Congress could be grave.



Although the decision is not easy, our concerns about Alito's lack of commitment to bipartisan judicial restraint compels us to urge Senate Democrats to vote against his nomination. We recognize that this strategy has risks: If the Democrats regain the White House and Republicans retain the Senate, well-qualified Democratic nominees may face an uphill battle when senators feel free to oppose them on the grounds of judicial philosophy alone. But the confirmation process has already become so polarized that we suspect Republicans will oppose Democratic nominees no matter what Democrats do now. Still, we urge Democrats to resist the call of liberal interest groups for a symbolic and self-defeating filibuster, which would prompt Republicans to retaliate by eliminating the filibuster with the so-called nuclear option, ensuring Alito's confirmation while permanently marginalizing Senate Democrats. If the Senate vote takes place more or less along party lines, Alito will be confirmed but Democrats will at least have taken a stand for bipartisan judicial restraint.

If Alito is confirmed, we hope that he proves to be practitioner of restraint rather than a justice in the mold of Scalia and Thomas. But the stakes for the Court are too high, at the moment, for us to vote our hopes rather than our fears. ■

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NOTEBOOK

PAUL BREMER, BLAMELESS . . . HILLARY CLINTON, TASTELESS . . . TRENT LOTT, HOMELESS

MISTAKES WERE MADE, CONT'D

WHEN LAST WE LEFT L. PAUL Bremer III (Notebook, October 18, 2004), the former Iraq viceroy was trying desperately to play down his contention, made in remarks he believed to be off the record, that the "single most important change—the one thing that would have improved the situation—would have been having more troops in Iraq at the beginning and throughout" the occupation. It wasn't the smartest thing to say during his former boss's reelection drive, and so Bremer quickly recanted, telling *The Washington Post* that he didn't really mean what he'd just said.

Now Bremer is at it again. His new memoir, *My Year in Iraq*, is chock-full of courageous admissions that the screwups during the first year of occupation were attributable to lesser beings. Bremer's most high-profile target is Donald Rumsfeld, who allegedly ignored a RAND study sent by the former ambassador indicating troop strength was woefully insufficient. But, true to his 2004 pattern, as soon as Bremer went public with his charges, he went to work explaining them away. When Tim Russert reminded Bremer that he had told the "Meet the Press" interviewer in July 2003 that he *hadn't* recommended more troops, Bremer shamelessly denied any contradiction: "What I said was I think this is an interesting report and you ought to take it into account. I didn't ask for more troops." (When Russert presented Bremer with a lengthy excerpt from his book about troop requests, Bremer diplomatically conceded, "This was the only time I made a formal request for more troops.") Russert could also have reminded Bremer of his August 2003 assurance to the *Post* that Iraq "is not a country in chaos, and Baghdad is not a city in chaos," given how the first chapter of Bremer's book is titled "Chaos." But, then, perhaps it was the only time he used the word formally.

L. Paul Bremer

THE MASTER'S HOUSE

ON MARTIN LUTHER KING DAY, Senator Hillary Clinton, flanked by the Reverend Al Sharpton, told parishioners at the Canaan Baptist Church of Christ in Harlem that the House of Representatives "has been run like a plantation, and you know what I'm talking about."

Unfortunately, the church's parishioners, who have presumably never worked on a plantation, didn't quite know what she was talking about (the New York *Daily News* reports that the comment "got muted response"). Apparently, the Simon Legrees in Congress were a bit confused, too. "I've never run a plantation before," House Speaker Dennis Hastert protested, in a surreal moment during a news conference on lobbying reform the next day. (Republicans have been known to deploy tortured plantation references from time to time themselves: "Since [the Democrats] think it is their job to run the plantation, it shocks them that I'm actually willing to lead the slave rebellion," Newt Gingrich said in 1994.)

But Clinton is sticking to her guns. When the *Daily News* asked on Tuesday night if she regretted the comment, she said, "Absolutely not. As I have said many times before, Congress is run in a top-down way." The last time we checked, an overly hierarchic corporate management style was not the biggest abomination of slave plantations, but perhaps congressmen *have* been separated from their families, chained together, forced to work for tobacco farmers, and publicly bought and sold during those mysterious closed-door sessions. And Clinton has been fond of the plantation metaphor for a while now: In a November 2004 interview on CNN, she said, "[T]hey're running the House of Representatives like a fiefdom, with Tom DeLay . . . in charge of the plantation." Plantation, fiefdom: We see a rhetorical style developing here. Why doesn't she reach out to Jews, who've sometimes been wary of her, by comparing GOP K Street's intimidation tactics to pogroms in the Pale? And, come to think of it, why haven't any intrepid Democratic candidates seized the opportunity to describe Jack Abramoff's hustling of Indian gaming tribes as a "Trail of Tears"? Oh—because most of them have better taste, that's why.

DON'T CALL IT A COMEBACK

IN 2002, TRENT LOTT WAS FORCED TO resign his position as Senate majority leader after stating that the United States "wouldn't have had all these problems over all these years" had Strom Thurmond been elected president in 1948 on the segregationist Dixiecrat ticket. This week, the Mississippian announced he would seek a fourth Senate term, fueling speculation that he would

DAVID COWLES

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try to regain his former top spot when Bill Frist vacates it next January. Though he has indicated that he is not *planning* on challenging Majority Whip Mitch McConnell for the job, he hasn't ruled it out, either. "I've been in the leadership, and I've been out of the leadership," he told reporters this week, according to the Associated Press. "I can tell you that being in the leadership is better."

Lott, whose home in Pascagoula was destroyed during Hurricane Katrina, also seemed to distance himself from his earlier, less racially sensitive remarks. "This hurricane was a great equalizer," he said when announcing his candidacy. "Biloxi is sort of an international city. You've got all kinds of ethnic backgrounds and minorities there. And yet, they were pulling together and helping each other. I felt very proud of that."

Actually, Katrina seems to have reformed Lott in a number of ways. A longtime advocate of tort reform, Lott has nevertheless filed suit against State Farm for refusing to cover his house. The senator is represented by his brother-in-law, Democrat Richard "Dickie" Scruggs, the high-profile plaintiffs' attorney who made a killing on the tobacco and asbestos industries. Though no one is suggesting that his suit is frivolous, even Lott recognizes the irony. In an interview with the Biloxi *Sun Herald* last month, he said that he told his "no-good brother-in-law" that "I don't believe in what he does—those big plaintiffs' suits—but how can insurance companies say we didn't have any wind damage from this storm?" How indeed.

DEPARTMENT OF CORRECTIONS

In its discussion of the Virgin Mary, "The Reason for Everything" (January 16) mistakenly claimed that the Greek word *parthenos*, rather than the Hebrew word *almah*, refers broadly to a young girl. In fact, *almah* is the more expansive of the two terms. We regret the error. ■

TNR commentary Excerpts from THE NEW REPUBLIC ONLINE

HOW TO SAVE SENATORS FROM THEMSELVES.

Off Camera

By T. A. Frank

Well, that was fun. Or not. The hearings of Samuel Alito are over, finally. At the end of day two, Arlen Specter thought Americans would be impressed: "[P]eople have been watching them, and they see long hours, and they see seriousness, and they see important issues, and they see the kind of dignity which we have had here today." That was before

If Alito doesn't have to listen, neither should we.

day three. (Specter: "[W]e actually didn't get a letter. . . ." Kennedy: "You did get a letter." Specter: "Well, now wait a minute; you don't know what I got. . . ." And so forth.)

This isn't to say the squabble between Kennedy and Specter wasn't diverting. But it did reinforce something that has become ever more apparent as we continue down the post-Bork path: Televised hearings of Supreme Court nominees are a miserable ordeal for the candidates and a waste of time for the rest of us. Let's review what we would have been spared had senators been deprived of the camera:

Charts. Do closed sessions feature much in the way of charts? Seems doubtful.

Useless questions devised solely for entrapment. Chuck Schumer was the undisputed master. Pouncing on earlier pronouncements by Alito that certain areas of the law are "settled," Schumer asked, "Is *Roe* settled or not?" To which the real answer is, "Of course not." If it were "settled law," there'd be no need to harp on it every time someone is nominated to the Court.

Questions to no one in particular. Thank you, Tom Coburn.

Joe Biden. To have Biden on display is bad for Democrats everywhere.

Weeping spouses. 'Nuff said.

At least Lindsey Graham was willing to acknowledge what was really going on, telling Alito: "But this is really not about you, so you don't have to listen. I'm talking to other people right now." Well, if he doesn't have to listen, neither should we.

WHY WE NEED NEW NANOTECHNOLOGY REGULATIONS.

Image Problem

By Clay Risen

By 2010, experts estimate that nanotechnology, the science of working on atomic and molecular levels, will be a $1 trillion industry. But things aren't all rosy for the nanotech world. Last Wednesday, a report from the Woodrow Wilson Center's Project on Emerging Nanotechnologies warned that nanotechnology could present a significant health threat if left unregulated; worse, noted its author, J. Clarence Davies, current laws "provide a very weak basis for identifying and protecting the public from potential risk." The report is only the latest in a series of think-tank statements, news articles, and congressional hearings warning of the coming nanotech threat. Which means that new regulations may, in fact, be called for—not because nanotech is a threat, but rather to prevent the public from drawing that very conclusion.

True, studies have shown that some ultrafine, nanomanipulated carbon molecules can promote blood clotting or impede breathing, much in the same way asbestos does. And, when scientists have the technology to mechanically alter DNA, new ethical questions will arise.

Regulation of nanotechnology may be needed to reassure the public.

Hence the need for smart, effective regulation. Davies proposes several possible regulatory regimes. One might consist of a system of tax breaks and incentives to focus on environmentally friendly research. Another complementary step would be for the Environmental Protection Agency to develop a review and approval process for work done on the nano level. (In fact, the EPA has already begun developing such guidelines.) The idea is not to limit or control the industry per se, but to give the public reassurance.

* T.A. Frank writes regularly for TNR Online.

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Mr. Abramoff goes to Hollywood. Preview

BY FRANKLIN FOER

NINETEEN EIGHTY-SIX MARKED the height of Dolph Lundgren's powers. Following his triumphant portrayal of Ivan Drago in *Rocky IV*, Hollywood pundits touted Lundgren as the Swedish Schwarzenegger. With his girlfriend, the flat-topped Jamaican actress Grace Jones, he formed a muscle-bound glamour couple that paparazzi could hardly resist. Therefore, it made little sense that Lundgren would follow a rookie producer into a small African kingdom to make a B-movie called *Red Scorpion*.

It didn't make any sense, except that the film's producer was Jack Abramoff—the same Jack Abramoff who bilked Indian tribes of $80 million and brought down the most powerful House Republican in the process. But, long before his siren song seduced congressmen like Tom DeLay onto the ethical shoals, it tempted the Scandinavian Adonis to abandon his burgeoning stardom for what seemed like a big-ticket production. Abramoff's winning quality was that he thought big and took others there with him. When he put together a production, even on his maiden film, he didn't just sign up a major studio. He signed up foreign investors to help cover his ambitious budget. He even signed up a foreign army to make the action scenes seem real. As he mulled the *Red Scorpion* offer, Lundgren got a tempting taste of Abramoff's largesse, when, thanks to the producer, he starred in his very own grip-and-grin photo-op with the president of the United States. "In [Lundgren's] living room somewhere, there is a photo of him with Ronald Reagan," the movie's production manager, Avi Kleinberger, told me.

Last spring, Kleinberger ran into Lundgren at the Cannes Film Festival. They began discussing the Abramoff scandal, which had just begun to spill into the international press. As the rest of the world expressed shock at Abramoff's venality, Lundgren shrugged. "Look, he was always connected with politicians, and you just had a feeling about the guy," he told Kleinberger. "I knew it was going to end badly for him."

How did a thick-necked action star foresee the tragic fate that most of Washington seems to have missed? Lundgren witnessed Abramoff in his Max Bialystock moment. As the 27-year-old producer of the doomed film that was *Red Scorpion*, Abramoff previewed the signature style that would make him so famous 20 years later.

IN 1986, JACK ABRAMOFF, like half the twentysomethings in Southern California, had an idea for a screenplay: the rollicking tale of Jonas Savimbi, the Angolan anticommunist rebel. Following the first rule of story craft, Abramoff pitched what he knew, and he knew Savimbi's story well. After spending his early twenties overseeing the College Republicans, Abramoff set up the Washington office of a conservative student group called the International Freedom Foundation (IFF)—a group that was later revealed to be a covert propaganda operation of South Africa's apartheid regime. (Military code name: Pacman.)

That Abramoff could imagine Savimbi as an archetypal Hollywood hero wasn't that surprising, considering that Washington conservatives—with an assist from the IFF—had been lauding him as one. At a 1986 black-tie dinner for the Conservative Political Action Committee, Jeane Kirkpatrick, the doyenne of the Reaganauts, passionately described Savimbi as a "linguist, philosopher, poet, politician, warrior ... one of the few authentic heroes of our time."

Hollywood development offices often search for film subjects that they can rip from newspaper headlines. But rarely do they glean their material from agitprop supplied by foreign intelligence agencies and conservative think tanks. There was also a little matter of poetic license. In their celebrations of the rebel leader, Washington conservatives overlooked the abundant evidence suggesting that Savimbi was an ideological chameleon with little compunction about stomping on human rights. But never mind the nuances—Abramoff had found his muse.

And Abramoff's well-connected Beverly Hills family supplied him the outlet, an entree to Warner Brothers. "It was Jack using Jack's contacts," says Jeff Pandin, who worked with him at IFF. A script doctor turned Abramoff's folkloric version of Savimbi into a bad parody of the loud whiz-bang cold war thriller then popular with audiences. *Red Scorpion*, described as the "African *Rambo*," tells the story of a Soviet-trained assassin (Lundgren) sent to murder a Savimbi-like character. In the end, Lundgren comes to understand the virtues of the rebel cause and turns on his communist bosses, killing lots of Cubans in the process. (*Red Scorpion*'s potty-mouthed dialogue bears tonal similarities to Abramoff's infamous e-mail exchanges: "An American can swear whenever, wherever, however much he or she fuckin' well pleases!") When Warner Brothers agreed to distribute the picture, Abramoff was suddenly living his Hollywood dream.

ABRAMOFF SOLD *Red Scorpion* as a work of verisimilitude. He claimed to know the region cold, and he would shoot his film in Swaziland, the small Bantu kingdom wedged between South Africa and Mozambique. His attraction to the region was financial as well as ideological. By hiring the services of the South African film industry, which suffered under the anti-apartheid boycott, he could exploit massive tax deductions available to investors there. "Sometimes the deductions totaled twice or three times the investments," says Peter Leon, the South African lawyer who drafted an initial contract for these investors. From his work with the IFF, Abramoff had acquired a host of helpful friends in South Africa. When he approached acquaintances in the Johannesburg Jewish com-

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munity, though only novice film investors, they shelled out a hefty pile of rands. All told, he raised $16 million for *Red Scorpion*—quite an impressive budget for the genre.

In 1987, Abramoff bought a house in Johannesburg and began commuting to the film's set in Swaziland. The idea of living with the cast and crew apparently never crossed his mind. "It's hard enough to find kosher restaurants in Washington," says Pandin. "Besides, Jack's not the roughing-it type." But the Swaziland location was just across the border from his old friends in the South African military, which had supplied him with between 30 and 40 troop transports and armed personnel carriers to make a film celebrating their Angolan ally.

Despite Abramoff's knack for making friends and acquiring military hardware, he showed early signs of his deficiency in the political sensitivity department. The implications of South African soldiers moving armor into a neighboring black country escaped him. But they didn't escape the Swazi king. Carmen Argenziano, who played a Cuban colonel, told me, "When they started bringing in military ordinance, [the Swazi government] said, 'What are you doing? Are you crazy?' "

The king's obstreperousness posed a problem for Abramoff: He could either abandon his patrons or move to another country. The South Africans urged the latter, proposing he set up shop in Namibia, on their northwest border. But this carried risks. "I strongly advised him against filming there," Leon says. That's because South Africa controlled the territory in defiance of the United Nations. And shifting to Namibia may have been bad politics, but it was worse business. The contract with Warner Brothers stipulated that the film have nothing to do with South Africa.

When lawyers like Leon pointed out the possibilities for calamity, Abramoff brushed them aside. He calculated that nobody in Los Angeles would ever learn of his Namibian move. "It was a huge country, and the chances of getting spotted—that somebody from the West would find them—was not great," Kleinberger told me. That might have been a reasonable calculation—if Abramoff were making a film with someone other than Grace Jones's boyfriend.

Lundgren and Jones had a tumultuous relationship, and, when a moment of tumult coincided with the filming, Jones traveled to the set to patch things up. At the time, following her star turn in *Conan the Destroyer*, it was hard to miss Jones. And her appearance in an apartheid country caused the stir you would expect. Argenziano recalls staying at the Kalahari Sands Hotel in the city of Windhoek. "Any time in the day, these old African bush people, people who had never seen an escalator, would hang around the escalator, jumping on and off. Then there were these old Boers, you know how they tolerated the black people. ... And into this scene walks Grace Jones." Following her visit, *The Namibian*, an independent weekly, ran a story on the film, from which *The New York Times* caught wind of *Red Scorpion*'s shooting location. Dismayed by Abramoff's transgression, Warner Brothers canceled their distribution agreement.

WITHOUT STUDIO BACKING, the project spun out of control. The South African investors panicked that the movie would never get made—and that they would never see their tax deduction. "Jack kept sweet-talking the [investors] about everything coming right," Leon says. But, back on set, "he was overwhelmed," Kleinberger remembers. When he saw extras milling about, waiting for their scenes, he would kvetch they were wasting his money.

Indeed, he had reasons to worry. Although the film's director, Joseph Zito, had a long history of churning out B-movies, including *Friday the 13th: The Final Chapter*, he directed *Scorpion* at a slower pace. The logistics of shooting in Namibia, where even basic props were difficult to procure, delayed production. "You had to travel back to South Africa to get something like a nail," says Kleinberger. The production extended months longer than anticipated, stranding the cast in Namibia.

Lundgren's discomfort in Namibia was the least of Abramoff's problems. Abramoff had no way to pay mounting expenses. Actors and catering companies went without pay, as did military consultants from the South African Defense Forces. All he could provide was the promise that money would arrive after the film's release. But Abramoff must have known this money would never materialize. His new distributor was Shapiro-Glickenhaus Entertainment, whose highest-grossing film to date had been *Maniac Cop*. And, thanks to the *Times*, the film faced the wrath of anti-apartheid activists. Before its release, the tennis player Arthur Ashe, who chaired Artists and Athletes Against Apartheid, declared, "If you have part of the South African Army as extras, it's hard to see the film as anything less than an endorsement of South Africa's policies."

In the end, not even Lundgren's rising star could save the film. Critics panned it—"The movie's reflective moments belong to Mr. Lundgren's sweaty chest," the *Times* quipped—and the public skipped past it. *Red Scorpion* grossed $4 million, leaving a $12 million debt. Instead of staying in South Africa to clean up this mess, Abramoff returned home. When actors launched a bankruptcy inquiry against Abramoff, he failed to show in court. "He just disappeared into the wilderness," says Leon. When his creditors reached him, he struck the same hangdog pose that he wore last year before John McCain's committee. Monyeen Lee, who cast the movie, says, "He took the calls, but he just said, 'There's nothing I can do. We're insolvent.' "

This experience would cause most aspiring moguls to seek a new career. Not Abramoff. Five years later, he released *Red Scorpion 2*, albeit without wattage comparable to Lundgren. But, in a sense, Abramoff never truly produced a sequel until he began lobbying, a vehicle that permitted him to properly replicate the chaos and antics of the original *Red Scorpion*. It is the rare sequel even more spectacular than the original. ■

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Can anyone define corruption?

Legal Jeopardy

BY EMILY BAZELON

THE PROSECUTORS HEARING Jack Abramoff's confession have, perhaps, too many choices. Depending on what Abramoff tells them, government lawyers could use any of at least four federal statutes to pursue the former lobbyist's associates, including members of Congress and their staffers. The laws date from different eras and were adopted not only to stem corruption, but also to fight racketeering and mail fraud. And they owe their reach to broad judicial interpretation as well as to legislative drafting. In other words, the laws hardly form a coherent, interlocking whole. Or, as Wayne State University Law Professor Peter J. Henning has written, "[O]ne can best describe the federal law as a hodgepodge."

That hodgepodge means that some legal observers have an unusual reaction to the current plight of lobbyists: sympathy. With multiple charges to choose from, some of which have vague standards of proof, prosecutors have great leeway in choosing whom they will charge, how they will charge them, and tremendous leverage to induce guilty pleas. All this discretion means prosecutors may snare people who stumble into giving gifts improperly in addition to those who deliberately buy votes. And it leaves Congress and K Street to conduct a vast amount of business without sharp lines to demarcate what lobbyists are paid and expected to do (give money to curry favor generally) and what's off-limits (giving money to win a specific result). In the wake of the Abramoff scandal, as other lobbyists confess that they've been breaking the law unwittingly or carelessly, clearer rules are a prerequisite for heading off future corruption meltdowns.

CONSIDER THE VARIOUS tentacles of federal anticorruption law. In 1853, Congress made it a crime to offer or give a thing of value to any federal official "with intent to influence his vote or decision" on any official action. The law was updated in 1962 to reach the person accepting the bribe as well as the one offering it. This statute remains the basic ban on bribery, requiring proof of a quid pro quo—I'll pay for a think tank to take you golfing in Scotland if you'll vote my way on the next appropriations bill—to show that the bribe was intended to "corruptly influence an official act." Because the standard of proof is relatively high—ideally, an official hangs himself with his own words, the sort of evidence that usually requires a phone tap or a wire—the penalties for bribery are relatively high as well.

But prosecutors who don't think they can prove bribery can turn to its little cousin: the gratuities provision of the same statute. The ban on gratuities broadens a prosecutor's reach by allowing her to go after a lobbyist or official without showing that he agreed to a quid pro quo. Instead, the prosecution has only to prove that the lobbyist gave a gift because of a politician's official act. (As the aphorism goes: "Bribery is for saying please. Gratuity is for saying thank you.") Once the government has established a link between a gift and a vote, for example, it can indict—and, if the circumstantial evidence seems compelling, it's likely to persuade a jury to convict.

There's a caveat to all this, but not much of one. In the 1999 case *United States* v. *Sun-Diamond Growers*, involving $5,900 worth of gifts to then–Secretary of Agriculture Michael Espy, the Supreme Court rejected the government's attempt to turn the gratuities statute into a weapon against lobbying generally, ruling that the government can't convict merely by showing that gifts were given to influence an official because of his authority over the giver's business. *Sun-Diamond* is often praised for making gratuities violations harder to prove, and it did. But, because the government still doesn't have to show that the gift was given or received with corrupt intent, a cooperating witness like Abramoff—plus circumstantial evidence—can be all prosecutors need. The danger of gratuities law, U.S. District Judge James S. Moody Jr. wrote in a 2001 case, is that it can "ensnare many individuals who had made innocent gifts or loans or had legitimate business transactions with officials." Adds former federal prosecutor Seth Rodner, now a defense lawyer at the Florida firm Fowler White Boggs Banker, "How do you tell the difference between currying favor, which is politics as usual, and illegality? *Sun-Diamond* doesn't tell you. It's just case by case."

If neither the bribery nor gratuities laws suffice, prosecutors can turn to the Hobbs Act, a successor to the Anti-Racketeering Act of 1934, which makes it a crime for politicians to use the power of their office to defraud the public by extorting a payoff. Defense lawyers have often tried to argue that Hobbs Act charges are too vague, but the Supreme Court has never overturned a Hobbs Act conviction for that reason, according to Ellen Podgor, a law professor at Georgia State University and the co-author (with Henning) of *White Collar Crime Prof Blog*. Or prosecutors can charge mail and wire fraud, which applies to a "scheme to defraud"—broadly defined—that employs a mail or wire service. "I can list on one hand the things that have been held *not* to be schemes to defraud," says Podgor. "I don't have enough fingers in a whole class of students to list all the things that *have* been held to be schemes to defraud."

DEFENSE LAWYERS SAY that the broad, ambiguous nature of anticorruption laws does lobbyists and politicians a disservice. "Since there's no bright-line rule, there's no way to navigate,"

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says Rodner. "Aspirationally, we don't want graft. The system should err in that direction. But, as a legal matter, you can sympathize with these people, because federal law doesn't proscribe giving gifts simply because of a politician's official status. So, if someone gives a gift thinking it's legal, and someone else accepts it on that basis, and then federal law enforcement says it's not—well, that can be terribly unfair."

Prosecutors were accused of overreaching in the case against Espy; after he pleaded guilty to one charge, the trial judge threw out eight counts against him, including the gratuities charges, and then a jury acquitted him of 30 more. In 1992, Joe McDade, then a Republican representative from Pennsylvania, was charged with racketeering and conspiracy as well as accepting gratuities—taking gifts and trips in exchange for helping contractors in his district. Other members of Congress rallied to his defense, calling the prosecution a dangerous precedent. McDade was acquitted in 1996.

How could Congress make corruption prosecutions more consistent and coherent? Lawmakers could obviously make corruption harder to prove by always requiring evidence of a quid pro quo. But that could well make corruption easier to get away with. A bold move in the opposite direction would be to ban the acceptance of any gifts by public officials. Current congressional rules sound strict—lobbyists are limited to giving members gifts worth less than $50 at a time, for a total of $100 a year—but lobbyists can make gifts of far greater value through charities, foundations, and other organizations. According to *The New York Times*, groups have spent $18 million to send 600 lawmakers on 6,000 trips in the last five years. Such junkets were Abramoff's mainstay; he took members of Congress to play golf in Scotland, Russia, and the Northern Mariana Islands.

Stricter rules have some precedent. "Florida state officials now have incredibly stringent standards for the acceptance of gifts," Rodner says. "That sets a very clear standard." And, oddly enough, K Street might find tougher rules a relief rather than a burden. After all, it's often the member of Congress and his or her staff who makes the overture. "We would be happy to stop having to give money every time they call," one Washington lobbyist told *Slate*'s John Dickerson earlier this month.

But that may be too much for Congress to swallow. Last week, House Speaker Dennis Hastert suggested a ban on privately funded junkets, but a loophole would allow such trips if the sponsor were a campaign contributor. Legislation introduced last month by Senator John McCain and Representative Christopher Shays isn't perfect, either. It calls for greater disclosure of lobbyists' donations and of the fund-raising events they hold. But asking legislators to file more forms won't make anticorruption law clearer. It would remain imperfect and unwieldy—to the benefit of no one except prosecutors. ■

Emily Bazelon is a senior editor at SLATE.

Upstate is no red state.
Buffalo Chip

BY MARISA KATZ

ELMIRA, NEW YORK

BACK IN 1999, when Hillary Clinton was still first lady and setting her sights on a U.S. Senate seat representing New York, her eventual opponent, Rick Lazio, taunted that she "needs an exploratory committee to find Elmira." Clinton's response was weak. She claimed to have stopped off in this small upstate town some 40 years earlier, on a family trip from Chicago to Scranton, Pennsylvania (even though Elmira is not exactly on the way). But, if her relationship to Elmira at the start of her campaign was tenuous at best, since then the town has become emblematic of just how intimately Clinton has gotten to know the geography, politics, and personalities of upstate New York—and how well upstate New York has gotten to know her.

Sitting in a living room adorned with pictures of Clinton posing with various members of his family, Elmira City Council member and former Mayor Jim Hare ticks off all the local places she has been: Bradley Farms, the Hilliard Corporation, Granny's Restaurant, the warplane museum, Brand Park, Elmira City Hall, Light's Bake Shop, Mandell's Restaurant. "She shakes hands with people, and they come away very impressed," says Hare, a moderate Democrat. "She's not the demon they thought she was." Hare sends me to Light's, off North Main Street, to get a take from other locals. He sent Clinton there, too, during her campaign. And, knowing that she has preceded me, I expect to find more photographs on the wall. Instead, I have to prod the owner to bring out the album of snapshots from behind the counter. When I ask why they aren't up, she shrugs. But Sundae Grimes-Yates, who owns a bridal shop in nearby Corning, explains later in the day that displaying such photos and posters in local businesses is frowned upon. Many people aren't as enthusiastic about Clinton as Jim Hare. And having pictures up risks alienating regular customers.

This persistent ambivalence gets lost when pundits point to upstate New York, as they have begun to with increasing regularity, as proof of Clinton's potential as a presidential candidate. Eleanor Clift laid out the burgeoning conventional wisdom last year in *Newsweek*: "Like Moses leading her party to the Promised Land, Hillary is treading a path to Red-State America. She may be the darling of the liberal left, but she won in New York by appealing to upstate voters who are traditionally Republican." *Washington Post* reporter John Harris employed the same logic when asked whether Clinton could shed her polariz-

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ing image in pursuit of the presidency. "We've seen here in New York state that she did, in fact, manage to do something like that," Harris told the "Today" show's Matt Lauer. "She ran very competitively and actually won some counties upstate with Republican-leaning voters. So that suggests that she did it in New York. That, to me, says it's possible she could do it nationally."

Although the junior senator from New York hasn't said anything yet about a return to the White House, a run appears likely. And, in anticipation, her champions are making upstate their best defense against doubts about her "electability"—a term popular with Democratic primary voters last time around. But, before the Hillary-can-do-it-because-she-did-it-upstate narrative gets any more airtime, it's worth pointing out its fatal flaws. Namely, upstate New York is not that conservative. Clinton hasn't done all that well here—in fact, she lost the region in 2000 and remains a highly polarizing figure. And, when she has won people over, it's been through retail politics at a very local level. Ultimately, if she's going to do well as a presidential candidate, she and her advisers must accept that her Senate campaign doesn't count as a dress rehearsal. She's going to have to bring something else to the national stage.

AMONG THOSE PROMOTING upstate as evidence is former Clinton White House spokesman Mike McCurry. Asked on CNN about Clinton's 2008 prospects, he responded, "Hillary really went upstate New York and won the hearts of people up there. That's hard to do, because that's pretty much red-state country in some of those counties up there." But McCurry, who was once press secretary to the dean of New York politics, Daniel Patrick Moynihan, should know better. Upstate New York is hardly a red state in microcosm. The numbers, the social profile, and the political culture of the place just don't support the claim. It's true that Republicans and Conservatives outnumber Democrats and Liberals in 44 out of 53 upstate counties. But that statistic is deceptive. The most conservative upstate voters are found in the region's rural areas, which are comparable to the conservative pockets of the Midwest. The major cities, however—Buffalo, Rochester, Syracuse, Albany—lean Democratic. In many ways, they resemble the aging industrial communities of New England. And, since the cities are more densely populated than the rural areas, overall upstate voter registration is nearly evenly split. The latest figures show 38 percent of upstate voters registered with the Republican or Conservative parties and 36 percent with the Democratic or Liberal parties. So, numbers-wise, upstate is far more purple than red.

At first glance, the demographics of the area do play into the red-state stereotype. The population is predominantly white. Median household income lags slightly behind the national average. The decline of domestic manufacturing and the pressures on the family farm have taken their toll. Yet, socially, upstate is quite different from red America. Whereas "values" issues are said to dominate in red states, here the economy is paramount. There isn't the evangelical network that mobilized red-state conservatives to the polls in the last presidential election. "Abortion is not an overwhelmingly resonant issue in this area—people accept that, under certain circumstances, it should be legal," says Onondaga County District Attorney William Fitzpatrick, a pillar of the upstate Republican establishment. In fact, according to Utica-based pollster John Zogby, the conservatism of upstate voters is actually a myth. "They may be more conservative than New York City or San Francisco," Zogby says. "But they're pretty middle-of-the-road. They tilt pro-choice, pro–gun control. The culture of New York is built around spending, around the welfare state, and they want their cut. Sure, there are conservatives here. But upstate will gladly give Democrats their vote."

When they do go Republican, upstate voters tend to go for moderates like recently retired nine-term Representative Amo Houghton, who broke with his party to vote against Bill Clinton's impeachment, Bush's 2003 tax cut, and the war in Iraq. Four members of the upstate congressional delegation are part of the Republican Main Street Partnership, a group founded to elect and keep social and fiscal moderates in Congress. Yet, lately, even the moderate Republicans are having a tough time upstate. In the campaign for governor, Democrat Eliot Spitzer is besting all of his potential Republican rivals by 18 points or more in polls of upstate voters. And, now that Jeanine Pirro, the former Westchester County district attorney and an Elmira native, has effectively admitted that she couldn't hack it against Clinton in the Senate race, there are no significant Republican contenders on the horizon. Citing declining registration and a dearth of candidates, one prominent upstate Republican confides, "I think the Republican Party in New York state is in serious, serious trouble."

BUT, EVEN IN this less-than-hostile terrain, Clinton's performance hasn't been that spectacular. She actually lost upstate by three points to her 2000 opponent, Rick Lazio. And that's despite the fact that Lazio entered the race late—after Rudy Giuliani dropped out in May—and then wasted further time downstate trying to catch up to Clinton's fund-raising. That's despite the poor judgment on display when the Long Island native introduced himself to upstate voters with an ad of himself walking on the beach. (Don't bother with your atlas: Upstate has no ocean beaches.) And that's despite the debate debacle, when Lazio ticked off upstate voters—particularly those who were unemployed—by declaring that the ailing upstate economy had already "turned the corner."

Though Clinton didn't beat her opponent upstate, it could be argued that she did fairly well there by the standards of Democratic Senate candidates. She gained two points over Moynihan in 1994 and four points over Chuck Schumer in 1998. But previous candidates didn't spend nearly as much time upstate as she did. Schumer's postelec-

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tion upstate tour was billed as a bid to make peace with skeptical strangers. "I know you don't know me," he told voters in Ogdensburg. "All I can say is, 'Give me a chance.'" Clinton, by contrast, launched her much-ridiculed "listening tour" of voter concerns upstate and parked herself here for much of her 16-month campaign. The strategy was one of necessity. Whereas Democrats could once focus on New York City and its suburbs and not have to worry about the prospect of losing most of upstate by large margins, voter registration numbers in the city have been falling and upstate now accounts for 62 percent of the electorate. When Clinton did her postelection swing, *The New York Times* called it a "victory tour" and noted that she thanked upstate supporters by their first names. She had a lot to be thankful for. If she hadn't performed at least decently upstate, not only could she have lost the race, but, after spending so much time here, it would have been a true embarrassment—like Joe Lieberman, who skipped the 2004 Iowa caucuses and moved into an apartment in Manchester, New Hampshire, but who still finished with only 9 percent of the vote and in fifth place in the primary there.

But, while Clinton may have done all right upstate for a Democratic Senate candidate, she didn't do that well compared with Democratic presidential contenders. Al Gore and John Kerry both won upstate with 49 percent of the vote, compared with Clinton's 46 percent. Where Clinton won ten upstate counties, Gore took 18 and Kerry 14. Although voters may base their choice for president on different criteria than they use for picking statewide candidates, Clinton was never like other statewide candidates. From the start, she was a national figure. And the comparison to Democratic presidential contenders is particularly important, as it speaks to her national electability. If Gore and Kerry won upstate New York but couldn't make sufficient red-state inroads, Clinton's loss upstate doesn't seem to bode well for her potential in truly red parts of the country.

It's also a bad sign that Clinton remains so polarizing among upstate voters. To listen to some political observers, you would think she had won over most of the skeptics. In *Hillary's Turn*, Michael Tomasky writes that Clinton's campaign strategy, particularly upstate, was a success because she got people to look past the stereotypes that had been pinned on her—that she was über-liberal, that she was pushy and judgmental, that she harbored selfish motives. "She persuaded people, at least 55 percent of them, to see her anew," Tomasky writes. Yet, on this point, Tomasky is simply wrong. The 55 percent he cites represents the total vote Clinton won statewide. Certainly not all of those people had an unfavorable opinion of her to begin with.

From upstate, there's anecdotal evidence that she has changed a few minds. But there are also people like Chuck Pinkey. After Clinton began her listening tour, Pinkey, a self-identified conservative and owner of River Valley Ford Tractor, placed an ad for a "HILLARY CLINTON MANURE SPREADER SALE" in Oneonta's *Daily Star*. "1 medium size heavy duty manure spreader with a floor so slick, nothing sticks," the ad read. "She spreads manure to the right or left, depending how the wind is blowing." Six and a half years later, Pinkey doesn't have any regrets. "I've said many times that all she's giving upstate New York is lip service," he says, adding that his opinions haven't changed since Clinton took office. "They've been confirmed."

The polls suggest there are more Pinkeys than converts here. While Clinton's favorable rating among upstate voters climbed a few points between her listening tour launch in July 1999 and Election Day in 2000, her unfavorable rating barely budged. Her polling has improved slightly since then, with the number of voters who say they have an unfavorable opinion of her dropping from 50 to 42 percent in Zogby surveys. And her approval rating has climbed 20 points, from 36 to 56 percent, since she entered office, according to Quinnipiac University polls. But the significance of this improvement is unclear. Her numbers track closely with Schumer's, and no one is talking him up as the Democrats' best chance to reclaim the White House. Plus, as Syracuse University political scientist Kristi Andersen points out, "People are predisposed to think favorably of their own senator. Congress is terrible, but their own senator is fine." Especially when she does their bidding.

In MAY 2004, Clinton attended a fund-raiser in Corning. It was a typical affair: About 80 people gathered at a private home for cocktails and mingling. Yet this particular evening was hosted by Jamie Houghton, chairman of one of the region's largest employers, Corning Inc., and brother of the former Republican representative. "When I introduced Hillary, I told the crowd that the last time a Houghton had a fund-raiser for a Democrat was about 1812," he said. Why the sudden détente? Well, Clinton was integral in passing clean diesel legislation that requires vehicles to be fitted with pollutant-trapping catalytic converters. And it was Corning that invented the ceramic substrates used in those converters.

Which brings us to yet another problem with using Clinton's upstate record as a predictor of national success: The upstate voters she *has* won over she courted with retail politics: showing up in small towns, becoming fluent in the most parochial of concerns, and delivering federal dollars. In a region that historically hasn't seen much of its senators, she has been omnipresent. Zogby says it's these repeat visits that have done the most to expand her support base. "Presence is so important to upstate voters," he says. "The psychology is: If you pay attention to us, we'll give you support."

But retail politics don't translate well nationally. "Obviously, you can't do a listening tour in all twelve zillion counties," says Lee Miringoff, director of the Marist Institute for Public Opinion in Poughkeepsie, though he suggests that the same skills are useful during primary season. Clinton's primary potential, however, is not in question. Right now, she's lapping all the obvious Democratic contenders in the polls. What's doubtful is how she would fare in a general election, where votes are sought not in intimate gatherings but in

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huge rallies, where legislation setting aside money for ceramic substrates produced by Corning Inc. isn't going to make a splash, and where there isn't much of a window to get voters to look past the stereotypes. Even Jim Hare has his doubts: "She had the time to come through here. She was able to mix and mingle. I don't know in a nationwide kind of thing if she will have the opportunity to overcome the demonization. In New Hampshire or Iowa, she could. But, in the battle of paid advertising, that becomes harder, because people just don't see the real person."

Ultimately, Clinton and upstate may have the same challenge ahead of them. At a job fair in Syracuse last month, she addressed concerns about upstate brain drain by suggesting that the steady stream of young people leaving has more to do with an image problem than an actual shortage of job prospects in the region. "We're trying," she said, "to not only get the word out about the benefits of living in upstate New York, but to start the process of changing the perception." Most people, though, are as certain of their beliefs about Clinton as they are about the connection between Syracuse and snow. It will be difficult to convince conservatives to see her in a more complex way, as the candidate who combines their concerns about values and the economy and national security into one presidential package. And, contrary to what the pundits say, Clinton's performance in upstate New York certainly doesn't prove she can do it. ■

Toronto Dispatch

Martin Short

BY DAVID SAX

"I AM NOT going to be dictated to as to the subjects that I should raise," thumped Canadian Prime Minister Paul Martin on December 14. Speaking from the floor of a British Columbia sawmill, an emblem of an industry that has been damaged by illegal U.S. tariffs on softwood, Martin's message was clear: Only his Liberal Party can safeguard Canadians from U.S. bullying. "I will make sure that Canada speaks with an independent voice now, tomorrow, and always, and you should demand nothing less from your prime minister."

Heading into an election campaign at the start of December, Martin's Liberals were in deep trouble. Over the last two years, Canadians had been treated to extensive press coverage of the Liberal "sponsorship scandal," which involved a government p.r. program in Quebec that, over the past decade, had evolved into a multimillion-dollar slush fund for the Liberal Party and its friends. Although Martin and his inner circle were cleared of any wrongdoing (most of the kickbacks were paid during the previous government), the Liberals were nonetheless tarred as the politicians who helped themselves.

To distract from the scandal, Martin chose to make anti-Americanism a hallmark of his campaign. Anti-American sentiment is common these days in Canada, which has broken with the United States over a variety of key policies, from the Kyoto Protocol to the creation of the International Criminal Court to the war in Iraq. Disputes over trade—including the softwood fight and border security—have further alienated Canadians from their southern neighbor. Martin openly chastised the Bush administration's environmental commitment at a U.N.-sponsored climate-change conference in Montreal on December 7. The next day, Martin's lead in the polls over his Conservative Party rival, Stephen Harper, widened to 15 points, the largest of the campaign.

That advantage promised to persist when, days later, American Ambassador David Wilkins warned Martin against using nationalist rhetoric to attract voters. "The last time I looked, the United States was not on the ballot for the January 23 election," said Wilkins at a speech in Ottawa. "It may be smart election-year politics to thump your chest and criticize your friend and your number-one trading partner constantly, but it is a slippery slope, and all of us should hope that it doesn't have a long-term impact on the relationship." Canadian newspaper columnists went ballistic, warning of U.S. interference in the Canadian vote. Theories abounded that the White House was trying to discredit Martin because it favored Harper. The Liberals reaped a windfall of support from the tiff, which recast Martin's party as staunch defenders of Canada's interests.

Yet what seemed at the time to be a tailor-made scenario for a Liberal victory quickly fell flat. Since the new year, the Liberals have seen their support eaten up by the Conservatives. Fresh allegations of corruption and a new investigation into possible stock-market manipulation turned the focus back onto Liberal credibility. The cross-border rhetoric has been all but forgotten.

As THE NEW REPUBLIC goes to press, polls show the Conservatives headed for a near-certain victory in Monday's vote, roughly ten points ahead of the Liberals. And that means Harper, the most pro-American leader in decades, is on track to become prime minister. Martin's failure points to the limits of anti-Americanism in Canadian politics. Differences aside, most Canadians want good relations with their neighbors. And, as prime minister, Harper will likely put an end to the darkest period in Canada-U.S. relations in recent history—to the benefit of both countries.

MARTIN ISN'T THE first Canadian prime minister to use anti-American rhetoric for political gain. His Liberal Party predecessor, Jean Chrétien, also resorted to name-calling and vocalizing a smug European sense of moral superiority

David Sax is a writer in Toronto, Canada.

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whenever conflicts with the United States arose. In doing so, Chrétien and Martin tapped into a genuine resentment many Canadians feel toward their southern neighbor. "Today, Canadians consistently tell pollsters that they are more tolerant, more respected by others, better educated and friendlier than Americans," wrote journalist Dan Dunsky in *The Toronto Star* newspaper last week. Many Canadians perceive their national identity in opposition to the United States—i.e., the less American you are, the more Canadian you become. A 2003 SES Canada Research poll found only 13 percent wanted Canada to be more like the United States. With the vast majority of Canadians taking a dislike to President Bush (82 percent of Canadians don't see him as a friend of Canada, according to a 2004 Ipsos-Reid survey), the not-so-subtle anti-Americanism the Liberals pursued had seemed politically risk-free.

But what the Liberals failed to realize is that, while anti-Americanism in Canada may be broad, it isn't deep. A majority of Canadians want closer relations on issues like security, antiterrorism, and energy policy, according to a 2005 survey conducted by SES in conjunction with the University at Buffalo. However much they may dislike Bush personally, most voters realize that Canada's relationship with the United States is vital. The Canadian economy relies on trade with the United States, which consumes 85 percent of Canadian exports and generates the bulk of Canada's GDP. With China on track to replace Canada as America's largest source of imports, and with developing-world agricultural producers like Brazil cutting into Canadian food sales, Canada's economic future appears increasingly uncertain—and continued trade with the United States ever more important.

And, yet, the Liberals' anti-American rhetoric has done serious damage to U.S.-Canadian relations. Each time a Liberal politician made a snide remark, calling Bush a "moron" or the Americans "bastards," Washington noticed. When the Liberals backed out of Iraq and continental missile defense, the White House was openly disappointed. In return, the United States has simply closed its ears to Canadian concerns, canceling and scaling back presidential and cabinet-level visits.

By 2008, new Homeland Security regulations in the United States will require everyone entering the country to hold a valid passport, a change that may affect the 40,000 truckers who cross the northern border daily. Keeping the goods flowing will require Canada's politicians and diplomats to work exemptions and compromises into the scheme. That, in turn, will require cashing in a lot of goodwill down in Washington, and, right now, there is little to go around. The feeling among Canadian voters is that Harper will bring some to the table.

IN MANY WAYS, Harper would fit in well in GOP D.C. He is a devout Christian who spent a portion of his adult life around the oil industry in Alberta. Openly opposed to same-sex marriage, he disapproves of abortion and believes strongly in putting money back into the hands of taxpayers. The Conservatives favor increased criminal sentencing and oppose the lenient drug laws Liberals have pursued. Harper argued for Canada's participation in the Iraq war and in the Pentagon's missile-defense shield. He adamantly supports Israel, and he pledges to greatly increase spending for Canada's ill-equipped military.

Up until now, these positions prevented Harper from winning. He was perceived as a Northern neocon and a Bible-thumping admirer of Bush, too rural and too Western for voters in the political heartland around Toronto and Montreal. In the 2004 election, voters rejected Harper over fears that he would turn Canada into one big red state. Martin certainly played up those fears during this campaign: One of the most recent Liberal TV spots wonders openly whether Harper is a pawn of secretive right-wing forces from down south.

But, this time around, Harper has blunted Martin's attacks by moving toward the center. His campaign has promised not to cut social programs, focusing instead on promoting measures to increase government accountability, while driving home the point on Liberal vice. His proposals are relatively modest: cutting the sales tax, switching to an elected senate, increasing at-home child-care payments, and shortening wait times for surgery.

Harper also tactfully distanced himself from Bush. When a December op-ed in *The Washington Times* painted a Harper-led government as "Mr. Bush's new best friend internationally and the poster boy for his ideal foreign leader," Harper fired off a response, playing down many of the affinities. He talked tough about the U.S. failure to honor its NAFTA commitments and pay back the roughly $5 billion in illegal tariffs it has collected on Canadian lumber. And he praised the work the United States was doing for democracy in Iraq but pledged that he wouldn't commit Canadian troops.

Harper's strategy seems to be paying off, with polls showing support for his party now surging in the usual Liberal bastions of Ontario and Quebec. A Harper victory, and a Martin loss, may be a watershed moment in Canada-U.S. relations, marking the moment when anti-Americanism fades from the halls of parliament. "As a cultural phenomenon, anti-Americanism is the patriotism of fools," says Michael Ignatieff, the Harvard professor of human rights and a noted intellectual who is now running as a Liberal candidate in suburban Toronto. A supporter of the Iraq war, continental missile defense, and a beefed-up role for Canada's military, Ignatieff has been criticized as too pro-American for the Liberals. But, as a potential future Liberal leader, he could be a strong voice for reconciliation in a rebuilt party. "There's no question that Canadians feel, and with good reason, that the Americans make the rules and then break them," he says. "[But] we mustn't make the mistake of mortgaging comprehensive security, military, economic, and border relationships for one or two files giving us a problem. We have to see the whole thing in the round." It looks likely that Martin and his Liberal predecessors will learn that lesson the hard way. ■

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Samuel Alito, executive assistant. Uncle Sam

BY JEFFREY ROSEN

SENATOR PATRICK LEAHY wanted a straight answer to a simple question. "Wouldn't it be constitutional for the Congress to outlaw Americans from using torture?" the senator asked Judge Samuel Alito during his Supreme Court confirmation hearings last week. Here was Alito's reply: "Well, senator, I think the important points are that the president has to follow the Constitution and the laws. . . . But, as to specific issues that might come up, I really need to know the specifics."

This wasn't exactly the answer Leahy was looking for. And Alito's evasive response was typical of his statements about executive power. Throughout the hearings, Senate Democrats repeatedly pressed Alito to explain his apparent embrace of the "unitary executive" theory—that is, the claim that the president's executive power cannot be infringed upon by Congress or the courts. Repeatedly, Alito dodged the question. He also misstated the law of presidential power on three occasions—inadvertently mischaracterizing landmark opinions by Justices Clarence Thomas and Robert Jackson—and denied the obvious connection between the unitary executive theory and the president's efforts to influence the Supreme Court's interpretation of laws through "signing statements."

A close reading of Alito's answers raises concerns that he might indeed be an advocate of broad and unchecked presidential power. If Alito fulfills these fears on the Court, he could support those who insist that the president's power in the war on terrorism is essentially unconstrained. And unconstrained power can lead to abuses—such as torture, illegal surveillance, or detention without charge—that undermine the core values of American society.

IN ITS MOST modest form, the unitary executive theory dates back to Franklin Roosevelt's administration, and it has been championed by liberal and conservative scholars and administrations—including Carter's and Clinton's—as a way of asserting the president's ability to retain control over independent agencies. But, as Beth Nolan, acting head of the Office of Legal Counsel (OLC) under Clinton, testified in the Alito hearings, during Alito's tenure in the Justice Department, the OLC began using the unitary executive theory in a new manner. It issued an opinion asserting that the president's authority to conduct covert international activities is "plenary, exclusive, and subject to no legal limitations," adding that Congress has limited powers in foreign affairs.

During the last decade, this invocation of the unitary executive theory to expand the president's wartime authority was championed most enthusiastically by John Yoo, a former clerk for Thomas and a former deputy assistant attorney general in the OLC. In 1996, Yoo wrote his first scholarly article asserting that the Framers of the Constitution intended "to cure legislative excess by erecting a unitary, independent executive" who had broad power to conduct war without congressional oversight. In President Bush's Justice Department, Yoo was most famous for his contribution to memos arguing that the Geneva Convention and criminal laws prohibiting torture do not apply to enemy combatants and that the president can spy on American citizens despite a federal law that says the opposite. In his confirmation hearings, Alito said he had never read Yoo's writings or those of "anyone else" who had defended the broad theory of unitary executive power during wartime. Given the prominence of these arguments, Alito's claim seems surprising at best.

During Alito's confirmation hearings, much of the questioning centered on a speech Alito delivered to the Federalist Society in 2000. Recalling his time in the Reagan administration, Alito said, "We were strong proponents of the theory of the unitary executive, that all federal executive power is vested by the Constitution in the president. And I thought then, and I still think, that this theory best captures the meaning of the Constitution's text and structure." Asked by Leahy to explain what he meant in the speech, Alito said: "To my mind, the concept of the unitary executive doesn't have to do with the scope of executive power. It has to do with who within the executive branch controls the exercise of executive power." In other words, Alito claims to understand the theory as a way of asserting the president's ultimate ability to control or to fire executive branch officials. When Senator Richard Durbin asked Alito if he agreed with Thomas's view that a wartime president has inherent powers beyond those explicitly given to him by Congress, Alito replied, "I don't think that the unitary executive has anything to do with that."

Alito was either confused or being less than candid. In the Hamdi case in 2004, a four-justice plurality, led by Justice Sandra Day O'Connor, said the president could indefinitely detain suspected enemy combatants seized on the battlefield in Afghanistan. This was permissible because Congress had implicitly authorized the detention in the resolution that it passed on September 14, 2001, authorizing the president to use "all necessary and appropriate force" against the perpetrators of the September 11 attacks. In his radical dissenting opinion, Thomas went much further. The president, Thomas suggested, could detain enemy combatants even without an ambiguous congressional authorization, because "the Founders intended that the President have primary responsibility—along with the necessary power—to protect the national security and to conduct the Nation's foreign relations. They did so principally because the structural advantages of a unitary Executive are essential in these domains."

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Asked by Durbin whether he agreed with Thomas's dissent, Alito's memory again failed him. "I don't recall that Justice Thomas uses the term 'unitary executive' in his dissent," Alito said. "It doesn't stick out in my mind that he did. If he did, he's using it there in a sense that's different from the sense in which I was using the term." Once again, either Alito was ill-prepared or he was being deliberately evasive.

EVEN IF HE doesn't explicitly embrace Thomas's views on the unitary executive, Alito might still ally himself generally with a broad view of executive power on the Court. He could, for example, follow the Bush administration's implausible interpretation of the September 14, 2001, use-of-force resolution as an implicit authorization for the president to ignore other federal statutes banning domestic surveillance and torture. Senator Arlen Specter—as well as Senate Democrats—made it clear that he opposes this effort to twist the use-of-force resolution into a presidential blank check. But, although Alito repeated platitudes about the president not being above the law, he refused to say how broadly he would construe the use-of-force resolution.

In an effort to discover Alito's views on the use-of-force resolution, several senators asked him whether he agreed with a famous opinion by Jackson questioning Harry S Truman's authority to avert a strike by seizing the steel mills in 1952. In that opinion, Jackson wrote that the president's authority was at its "lowest ebb" when he acted in the face of explicit congressional opposition. Jackson went on to write that the president was in a "zone of twilight" when Congress's intentions were unclear. Alito inadvertently mischaracterized Jackson's opinion, suggesting that congressional opposition would put the president in Jackson's "twilight zone" rather than in the category where executive power was weakest. The lack of facility with Jackson's opinion—as well as a failure to remember that O'Connor had relied on it in upholding the detention of enemy combatants seized on the battlefield—raises the concern that Alito is less interested in strictly construing presidential power than in reining in the power of Congress. (Indeed, when asked about cases limiting congressional power, such as the Supreme Court decisions striking down federal bans on guns in schools and violence against women, Alito described the relevant case law even more precisely and accurately than John Roberts.)

A final series of troubling questions concerned Alito's endorsement of presidential "signing statements"—that is, statements by the president, when he signs a law, setting out his interpretation of its meaning. In a Justice Department memo in 1986, Alito endorsed signing statements as a way for the president to influence judicial interpretation. Pressed to explain this memo, Alito said he was merely discussing "theoretical problems," adding, "I don't see any connection between the concept of the unitary executive and the weight that is—that should be given to signing statements in interpreting statutes."

In fact, the connection is obvious. As Leahy noted, *The Wall Street Journal* has reported that Bush has cited the powers of the "unitary executive" 103 times in presidential signing statements. The two most notorious examples are the signing statements that Bush attached to the recent federal laws banning torture and restricting the ability of courts to review the habeas corpus claims of enemy combatants. In his signing statements, Bush interpreted the two laws to mean virtually the opposite of what Congress obviously intended. He reserved the right to ignore the torture ban. And he said that the law restricting habeas corpus review of enemy combatants might prevent the Supreme Court from hearing a pending challenge to the detention of Osama bin Laden's alleged driver, even though Senator Carl Levin, one of the co-sponsors of the law, explicitly said that it would not affect pending cases. Alito declined to say whether he agreed that signing statements like this should influence the Supreme Court. But his refusal to acknowledge the connection between his past support for signing statements and the Bush administration's use of them to ignore laws with which it disagrees seems disingenuous.

IF ALITO IS confirmed, it's possible that he will surprise his opponents and supporters by taking a more limited view of executive power than he displayed in his hearings. After all, Judge J. Michael Luttig, at one point also a candidate to replace O'Connor on the Supreme Court, had initially endorsed Thomas's view that the president can detain citizens as enemy combatants without congressional authorization—even citizens seized in the United States, such as José Padilla. But, after the Bush administration, afraid of being rebuffed by the Supreme Court, tried to transfer Padilla from military to civilian custody, Luttig wrote a courageous and blistering opinion suggesting that the administration had lied to the courts in suggesting that Padilla could not be given an ordinary criminal trial because he posed a grave danger to the country.

And Luttig isn't alone. For moderates who have been inclined to give the Bush administration the benefit of the doubt in the war on terrorism, the recent revelations about the scope of a clearly illegal domestic spying program represent a turning point. The administration's unabashed effort to defend its conduct with implausible legal arguments—such as the claim that Congress authorized a program that federal law obviously forbids—have exhausted any reservoir of trust among open-minded citizens. Even if Congress makes its views crystal clear, the administration has reserved the right to ignore any laws that it finds inconvenient. The only thing standing between the president and unchecked power, therefore, is the Supreme Court. That's why, for Republican as well as Democratic senators who believe judges should interpret the law, not invent it, Alito's testimony about executive power must be a cause for concern. ■

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BOOKS & THE ARTS

STANLEY KAUFFMANN ON FILMS

Scene Changes

IF WOODY ALLEN'S LATEST FILM were the work of a newcomer, especially a Brit, it would have caused much less excitement. **MATCH POINT** is set mostly in London, and its characters are mostly upper-class English. From a writer-director without a track record, it would have been judged solely on its merits. But this picture is by a professional New York Jewish schnook, many of whose characters in the past behaved like fugitives from Jules Feiffer, and he now deals with people we might expect from David Hare. The mere fact of Allen in Mayfair caused many jaws to drop in advance.

MATCH POINT
(DreamWorks)

CASANOVA
(Touchstone)

One aspect certainly is remarkable. The dialogue is, at least to an American ear, authentic. Allen doesn't mention any aid on the script, so we are to assume that he wrote it himself. British dialogue is more difficult for American writers than might be thought, and Allen comes through all right, even to the provincial dialects of two detectives who appear near the end. But after that concession, questions on the screenplay loom.

About the reasons for his move to this new setting rumors abound, all irrelevant. Much more pressing is the question as to why, having decided on London, Allen chose this eventually grim material. Serious stories dot the Allen record—*Interiors*, *September*, *Shadows and Fog*, *Crimes and Misdemeanors*—and they are all dim numbers. Still, we could usually see what he was trying to do in them, which is not the case here.

Match Point starts as a fairly nimble, faintly comic piece, then develops into a complicated sexual drama, and then metamorphoses into violence. (Allen has tacked on a coincidence to justify his title.) The first shift is moderately interesting, with its implication that social gavottes can deepen into emotional storms. But the second change, into the criminal last section, is arbitrary. Nothing in the film up to then predicates this ending, which is bitter in action and in aftertaste. *Match Point* doesn't even dramatize the truth that people who don't suspect violence in themselves can astonish themselves with violent acts. Allen's finish is just an inferior Somerset Maugham surprise.

Chris, a former professional tennis player from Ireland, is taken up by a wealthy English family because he is a friend of the family's son, Tom. The daughter of that family, Chloe, falls headlong in love with Chris, and her father gives him a good job in his huge business. Marriage of course comes along, and so do complications. At the start Tom is engaged to an American actress named Nola, with whom he soon splits. But Nola and Chris have secretly begun something that doesn't stop with his marriage to Chloe. Clouds darken.

The musical-chairs aspect of these relationships is as good as anything in the picture. The complications seem almost rhythmic—balletic—for a while. In good measure the shenanigans are interesting because Jonathan Rhys-Meyers gives Chris some smooth dangerous power and because Scarlett Johansson as Nola is irresistible. In *Lost in Translation*, where she was Bill Murray's vulnerable fling in Tokyo, and as Vermeer's treasure in *Girl With a Pearl Earring*, Johansson was captivating. No less captivating here, she moves into dark drama.

Allen's direction is better than anything in his screenplay. One compensation for the sags in his screenplays through the years has been the growth of his directing ability. In *Match Point* he has sometimes opted for what seems like a series of medallions—close-up after close-up almost creating a mosaic. Faces function as part of a design, continuingly realized as things move on. Further, although this is one of Allen's longest films, it never feels drawn out: each scene is in itself terse. The pity is that the design, terseness and all, resolves into so little. Devoid of basic idea or theme, *Match Point* leaves us only with the sense that a plot has been worked out, that its sheer plottiness is the reason it was made.

The scores for Allen films have often used pop songs of the past—pre-rock. This time the present is left behind in a different way. Near the beginning comes a scene in a box at the opera, and the soundtrack thereafter is laced with bits of Verdi, Donizetti, and others. These excerpts have nothing to do with what we see at the moment; maybe Allen just felt that a film made abroad ought to have a classy score. Notable, too, are the tieless gents at dinner, a style that may now (for all I know) be modish in London; and the smoking, which would surely not have occurred if the picture had been made here.

It must be a fluke. It could hardly have been planned, in the dank entrails of the film business, that **CASANOVA** should be made and released in time to emphasize Heath Ledger's performance in *Brokeback Mountain*. Fluke or not, the conjunction is a boon, because the only imaginable excuse for *Casanova* is that it adds luster to Ledger.

I can't remember such a contrasted pairing of roles since 1946, when, with the Old Vic, Laurence Olivier played Oedipus titanically and twenty minutes later pranced out as Mr. Puff in Sheridan's *The Critic*. The two sets of performances are hardly equivalent, but the sharpness of the Ledger contrast is a reminder of Olivier.

The cowboy in *Brokeback Mountain* was an instance of complication encased in dignity. Like all good performances, it was at once surprising and recognizable. Ledger's Casanova, however, is all recognition, no surprises. Grant him the (extraordinary) ability simply to move from one of these roles to the other, and

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thereafter there is only a series of expected moments. Yes, he duels; yes, he charms and dances and dares: it's all on the tasting menu, and we are not allowed to skip any item.

Venice, 1753—in fact, the views of Venice are, with Ledger, a consolation for enduring the film. Fellini tried the subject in 1976 and (as I recall) tried to cling to some facts about Casanova. This Jeffrey Hatcher–Kimberly Simi version, directed by Lasse Hallström, has a resemblance to some of Casanova's memoirs but is chiefly based on the assumption that, in a costume drama, anything goes. The story, dealing with impersonations and hairsbreadth escapes and fleeting amours, stuffs as many action episodes as possible between the beginning and the end. A number of lovely women are in the cast, as is the dependable Jeremy Irons, playing a sadistic bishop. Beyond everything else, however, is the chuckle that admirers of Ledger's cowboy may get by comparing it with his rococo performance here. ■

Ali Salem

The War of the Hotels

Imagining a terrorist's mind.

In a culture of intellectual quiescence, the Egyptian playwright Ali Salem stands out for his courage, his willingness to break with the crowd. Born in 1936, in the time of the monarchy, he made his own way through life, and educated himself in the classics. Some years ago he provoked a storm by openly journeying to Israel and writing about his experience in that country. This led to virtual ostracism by his peers. But he stood his ground, and in the crucial years since September 11 he has written scathingly and satirically of the pathologies of the Arab world—the anti-Americanism, the animus toward modernism, the refusal of the Arab intellectual elites to face the burden of Arab history. Salem is fierce in his denunciation of radical Islamism, and of the evasions and denials that sustain it in mainstream Arab life. What follows is a piece occasioned by the terrorist attacks on the hotels in Amman that took place last November 9. It appeared in Al Hayat, *the London-based pan-Arab daily, from which I have translated it.*

—Fouad Ajami

The battlefield commander Abu Fulan narrated to us what follows: "In the war of the hotels—and it was the most arduous of wars—we pulled off three raids, two of them in southern Sinai, the third in Amman. We exacted a toll of tens of souls, we made orphans of hundreds of children, we turned scores of wives into widows, we brought grief to countless mothers. We were able, with Allah's blessing, to inflict injuries on hundreds of people, some of whom lost an arm or a leg, some of whom were disfigured, and some left paralyzed for life.

In the first two raids in Egypt, we used two cars loaded with explosives. But in the raid against the Amman hotels it was decided that the mission would be executed by fierce heroes, from among ourselves, who had dedicated themselves to the war against the hotels and the wicked ones who frequent them. Three men and a woman were selected for that mission when we made sure, after all the necessary experiments and investigations, that they were people who hated festive occasions and weddings and those who partook of them.

Read the pages of our history, consult the histories of our ancestors: did any one of them celebrate a wedding in a hotel? In the days of old, caravanserais were places where the merchants and the travelers and their pack animals slept. We never heard of weddings in those caravanserais of old.

Luckily for us, our enemies are fools. We strike them time after time and they never know why; we kill them and they wonder by what right we do so. We see our enemies on the satellite channels, we hear them react with puzzlement on the airwaves, we hear them asking, 'What is the meaning of this particular attack? Is it aimed at the Jordanian government or the Jordanian people? Is Jordan being told to refrain from a particular policy or to adopt a position on an issue of importance: what is the message?'

As you can see, our enemies are given to ignorance. They refuse to admit that joy, and all that springs or derives from it, represents the greatest danger to our people. You who can comprehend things should know that joy is a contagious disease. What will happen to the sons of this Islamic community if they all catch the fever of joy? This bridegroom in Amman whose wedding we destroyed, and his family: did they not stop for a moment to ask how we could give ourselves to joy when Palestine is occupied and Jerusalem is not yet liberated? How can we listen to music while our people in Baquba and the Anbar province are exposed to the noise and the attacks of the Apache helicopters? How can we rejoice while the Egyptian government manipulates elections? How can we celebrate a wedding in a hotel when the rights of Arabs are violated everywhere, when France prevents Muslim girls from donning the veil and the headscarf? How can a believer treat himself to a wedding, and to the pleasures of the wedding night, in the shadow of the desperate conditions that prevail in our Arab nation?

We cannot permit ourselves to tire or to give up before this nation recognizes that joy is our enemy, that explosives are our constitution, that Zarqawi is our leader, that grief is our goal, and that destroying all manifestations of pleasure is our mission. Call up the image of the raid on the Amman hotels: contented people, happily smiling at each other. They are happy to the extent that they forget their wretched brothers. All these happy people have jobs, and government positions; they are possessed of wealth to spare and can travel to a distant country for a joyful celebration. Tell me, in the name of God, how else can we remind them of the suffering of our people if we do not strike them with explosives and turn them into corpses, into an example for those who should heed examples? Yes, I know that among the fatalities are innocent workers and waiters obliged by the nature of their work to be there. But we should not grieve for these innocents, or fear what will happen to them, for on Judgment Day everyone will be treated according to their deeds and their intentions.

We are at war, and victory in this war requires clarity and candor. It is impossible to change and to reform this

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region unless we destroy much of what stands today. We cannot permit the existence of a state in Palestine, or a state in Iraq. We shall strive to destroy the state in all the lands of the Arabs and the Muslims. For the state, with its modern features, with its laws and its constitution, its parliament and its human rights, and its separation of powers and its devotion to development, could lead to human fulfillment, and such an outcome we shall not allow.

Our foolish rivals among the intellectuals speak of moderates and extremists in our camp. I say to them, 'You fools, have you seen among our ranks anyone who believes in the legitimacy of the modern state?' You believe in scientific research and think tanks. Take everything these so-called moderates say by way of speeches and sermons and pamphleteering, and you will easily discover that no one among them believes in the modern state. They, like us, want to destroy the present order of things and to arrive at a new reality that makes no room for joy or for hotel weddings. We each have our code, each sheik or preacher has his own way and method. The proof is that when the extremists among us kill sixty people, they, the moderate Islamists, step to the microphone to announce that they condemn this criminal act—but just as the listener is about to be reassured, they pronounce that we should not be talking about sixty people while forgetting the thousands killed by the Americans in Iraq, that we should not forget those killed by Ariel Sharon every day. Nor should we forget the victims killed by Hulagu, the Mongol invader. Then our moderates end with the all-time favorite song among the Arabs, the one that goes: 'All those bloody events will come to an end with the destruction of Israel.'" ■

Joseph Frank
Medieval Modernism

JACQUES AND RAÏSSA MARITAIN: BEGGARS FOR HEAVEN
By Jean-Luc Barré
Translated by Bernard E. Doering
(University of Notre Dame Press, 495 pp., $50)

JAZZ AGE CATHOLICISM: MYSTIC MODERNISM IN POSTWAR PARIS, 1919–1933
By Stephen Schloesser
(University of Toronto Press, 449 pp., $85)

THE NAME OF JACQUES MARitain is unlikely to arouse in present-day American readers what Edmund Wilson once called "the shock of recognition," the thrill of excitement that marks an important intellectual encounter. In his own country, though, Maritain's life and work is still capable of provoking a great deal of interest. This first full-length biography of the neo-Thomist philosopher and his agonizingly pious wife Raïssa, Jewish by origin but a Catholic convert, ran through three printings in three years and won the Prix de la Biographie of the Académie Française. Their lives spanned the period running from the Dreyfus case in 1894 to the death of Jacques Maritain in 1973. And since they had been involved, personally and intellectually, in all the agitations of this momentous period in both French and world history, this account of their lives offers a fascinating panorama of the clashing ideas and ideals that still echo in our own time.

Jacques Maritain was an extremely complex and contradictory personality, a man with a disarming charm who always seemed to embody a somewhat subversive version of whatever cause he was espousing. A resolute partisan of the ideas of Thomas Aquinas, he refused to confine them to the past and used them to defend the most extreme experiments of modern art. When he taught in the United States, he was considered to be a "Catholic Marxist." And he was perhaps the only important French intellectual since Tocqueville who ever wrote anything positive about the United States—in *Reflections on America*, published in 1958—without overlooking its problems and its deficiencies. The issue that preoccupied him throughout his life, the relation of religion, culture and politics, has recently taken on a new acuity, particularly in the United States, and thus history has given a renewed relevance to the flood of writings with which he analyzed this question from every conceivable point of view.

Jean-Luc Barré's and Stephen Schloesser's books supplement each other very neatly. Barré's biography deals largely with the personal lives of the Maritains, and while not neglecting the artistic and cultural background treats it only allusively and sketchily. While this context is sufficient for a French reader, it is likely that an American may well desire more information on, for example, such figures as Charles Péguy and Léon Bloy. Schloesser's book, a lively and impressively erudite evocation of *le renouveau catholique*, the Catholic renaissance that occurred in France during the years after World War I, fills in this gap nicely. Maritain played a very important part in this renaissance, and the book devotes two chapters to him and Raïssa. It also contains sections on the painter Georges Rouault, the novelist Georges Bernanos, and the organist and composer Charles Tournemire, whose work was inspired by the plainchant of the Middle Ages. Many of the figures with whom Maritain was deeply involved are vividly evoked by Schloesser in more explanatory historical detail, and the same is true of Maritain's philosophical ideas as well as the social and political background of the period.

JACQUES MARITAIN CAME FROM A family deeply involved in French politics, and his grandfather, who had been a noted opponent of Napoleon III, was a member of the government that made peace with Bismarck and mercilessly suppressed the Paris Commune. His mother, Geneviève Favre, who converted to Protestantism, was politically active in progressive causes and became a close friend of Romain Rolland. Of her two children by an unhappy marriage leading to divorce, her son Jacques was raised as a Protestant, while his sister Jeanne received a Catholic upbringing.

The earliest years of Maritain's edu-

Joseph Frank is a professor emeritus in Slavic and comparative literature at Stanford University and the author, most recently, of DOSTOEVSKY: THE MANTLE OF THE PROPHET, 1871–1881.

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cation remain something of a mystery, and Barré notes that on this point "his silence was quite resolute." But it is known that he and his sister were confided to a Protestant minister, Jean Réville, a specialist in the history of religions who taught at the École des Hautes Études in Paris and eventually at the Collège de France. This early schooling in Protestantism may well have contributed to the streak of independence and unconventionality that Maritain always exhibited.

As an adolescent, Maritain became deeply involved in the agitation over the Dreyfus case, and "at about thirteen or fourteen I had become a socialist. The articles of Jaurès ... set me on fire." Jean Jaurès, a founder of the Socialist Party in France, was passionately active in defense of the falsely convicted Captain Dreyfus; but he was not an advocate of the violent destruction of capitalism by revolution. The walls of young Jacques's room now became covered with incendiary slogans, and he would repair to the kitchen to read Jaurès's newspaper in the company of the family cook and particularly of her husband, real proletarians whose company allowed him to escape his own bourgeois world, which he had come to feel was based on injustice. Barré remarks quite justly that "Maritain ... would never deviate from the commitments of his youth, unrelenting toward the established order and a violent critic of bourgeois values"—though for many years this criticism was couched in right-wing terms rather than the left-wing slogans of his youth.

THE LIFE OF JACQUES MARITAIN was decisively changed when he met Raïssa Oumansoff at the Sorbonne, where they both were students. Her Russian-Jewish family had emigrated to France precisely to escape the limitations imposed on Jewish students in their previous homeland. The first encounter of the two, which she recounts in her memoir *Les Grandes Amitiés*, occurred when "a young man with a gentle countenance" approached her after class and asked her to join a protest movement "against the harsh treatment of which Russian socialist students were victims in their country." They "soon became inseparable," and took long walks during which "our conversations together were interminable." In these exchanges of ideas, "we had to rethink the entire universe, the meaning of life, the fate of man, the justice and injustice of societies." Both were studying science, not philosophy or religion, but the issues raised by the Dreyfus case had now provoked such questions for the members of the younger generation who were not, as Jacques wrote in a letter, part of "that ocean of dissolute and ignoble ineptitude of capitalist dwarfs and daddy's boys."

Jacques's closest friend at this time was Ernest Psichari, the grandson of the great historian of religion Ernest Renan, whose extremely influential works were devoted both to the origins of Christianity and to the history of the Hebrew people. Renan had reverentially depicted Jesus as one of the sublimest examples of humanity, but refused to accept him as a supernatural God. The atmosphere that Maritain encountered in the home of this family, as he wrote later in *Antimoderne*, was one "for which original sin and even the metaphysical misery of human nature were really non-existent and had never really happened. And in this way it was ... basically anti-Christian." The highly poetic letters that Maritain exchanged with Psichari, who later served with the army in North Africa and wrote a well-known novel exalting the military life, reveal their shared quasi-mystical response to nature, which they saw as "ineffable and completely laden with mystery and the shadows of the divine." Barré remarks that the later Maritain already seems "fully present" in such an intuition; but "it was outside of God that his religious sentiment still found its foundation."

The meeting with Raïssa provided Maritain with another interlocutor who shared such feelings, and for whom the sciences they were both studying provided no outlet. The dominant philosophy of the Sorbonne was "a calm and resolute materialism," and even for a professor they admired, "life was reduced to a combination of chemicals and consciousness as an epiphenomenon." They read Spinoza and Nietzsche, as Raïssa recalled, and admired both—Spinoza for "exhorting man to love God intellectually, without asking to be loved in return," Nietzsche because of his "desperate passion for that truth whose death he set himself to proclaim." But neither proved satisfactory, and, possessed by what they called "metaphysical vertigo," they decided on one of their walks in 1901 that if they found no answer to the question of why life was worth living in a universe of misery and wickedness, they would commit suicide "before the force of our young years was worn out."

A BULWARK AGAINST TOTAL DESPAIR appeared in the person of Charles Péguy, a poet and essayist and one of the most ardent defenders of Dreyfus, and a friend of Jacques's mother whose publications she helped to finance. Péguy was a socialist whose poetry was nonetheless filled with nationalistic fervor (one of his most important poems was a celebration of Jeanne d'Arc); and though he had broken with the official Catholic Church, he gradually—and privately, since his wife was bitterly anticlerical—returned to the faith, viewing himself "as a maverick socialist in the revolutionary message of the Gospels." Péguy's bookshop was located on a street across from the Sorbonne, and the *Cahiers de la Quinzaine*, or *Fortnightly Notebooks*, that he published became an important Dreyfusard organ for younger progressive writers such as Romain Rolland. Jacques wrote him a long and angry letter quarreling with a criticism of Jaurès in the *Cahiers*, but the young neophyte was a faithful and attentive reader of the journal, and he never missed the weekly Thursday evening meetings in the bookshop.

It was also a weekly ritual to walk across the street with Péguy to attend the lectures of Henri Bergson at the Collège de France. Bergson used the latest results of scientific thought to argue that science itself was merely instrumental and pragmatic, and that reality could only be grasped by intuitive sympathy with the *élan vital*, the life force, of the endless flow of time. Bergson's efforts to reinstate the freedom of the human personality in face of the reigning determinism served as a temporary

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stopgap for Jacques and Raïssa, as it did for so many others, by helping them to escape from their "existential anguish." "This Jewish philosopher," as Schloesser remarks, "was perhaps the main intellectual figure for Catholics during the high-water period of conversions after the Dreyfus Affair."

Jacques and Raïssa were soon to follow this path, and undergo conversion under the influence of Léon Bloy. He was a Christian novelist and publicist whose works were filled with furiously vitriolic and apocalyptic indignation against the injustices of bourgeois society. "For Bloy," as Schloesser explains, "those who suffer, especially those considered to be polluted figures by self-righteous society—for example, the prostitutes and the Jews—are redeemed insofar as they are participants in the ongoing Passion of Christ." Moreover, they also redeem others, since Bloy's highest value was "vicarious suffering." He lived in extreme poverty, and Jacques and Raïssa sent him twenty-five francs out of the blue one day after reading one of his novels. A previous pamphlet, *Salvation Through the Jews*, which was published in 1896, provided a much more favorable vision of this people than that of the best-selling anti-Semitic tirades of Édouard Drumont. When it was re-printed in 1906, with the financial help of the Maritains, it was dedicated to Raïssa.

The two were married in November 1904, much to the dismay of Geneviève Favre, who resented the influence of Raïssa, "whom she never ceased to consider the manipulator of her son." During the next two years, under the influence of Bloy, they began to read the lives of the saints and martyrs; and when Raïssa was seriously ill in 1906, Jacques found himself praying on his knees that she recover. Urged on by Bloy, they decided to accept conversion, though they were so unfamiliar with Catholic rites that they thought he could baptize them himself. A notebook entry by Jacques for this year asserts that "Christians have abandoned the poor," and that ordinary Christians "fill me with horror." But he goes on: "With one's body present in this actual age of the world, one must live really with the first Christians, go back beyond all the Christians of the present time." He also remarks that Bloy is like a Jewish prophet, raging against his own people but still part of them all the same.

After their marriage the couple moved to Heidelberg, where Jacques had obtained a scholarship to study with Hans Driesch, a world-famous biologist whose work on embryos had stirred up a great deal of controversy. (It is surprising that his name has not been revived recently, because he argued that it was difficult to explain embryonic development except as the work of a superior intelligence, though he insisted that his researches were not opposed to Darwinism.) The two years they spent in Germany was a period of solitude, during which, on a visit to a monastery on the Isle of Wight, Jacques sought spiritual guidance and was told to consult a Dominican father, who profoundly influenced the couple until his death in 1914. It was he who advised them to read Thomas Aquinas.

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Jacques Maritain, circa 1935

Raïssa, "though she was already of the opinion that he was out of date and tiresome," nonetheless believed that the study of Aquinas might be of some help to Jacques. "Everything came to me through her," he wrote in 1908, describing his first acquaintance with the *Summa Theologica*, which "was a pure gift to me." "I received once and for all certitude about the first truths concerning the intelligence and the joy of seeing that it was strong enough to lead the principles of reason into the very heart of the starry night of faith." This conviction that reason itself, as defined by Aristotle and Aquinas, did not come into irresolvable conflict with Christian faith then became the immutable cornerstone of Maritain's own philosophy.

The same priest who had recommended the reading of Aquinas also advised them to subscribe to the newspaper *L'Action française*, the journal of Charles Maurras, and they did so with that docile subservience to churchly authority that continued for far too many years and which casts an ineradicable shadow on their lives. Maurras himself cared nothing for religion. He dedicated his life to undoing the French Revolution. The most influential right-wing publicist of his time, he advocated the restoration of the monarchy and promulgated an extreme anti-democratic and anti-republican politics that continued to exercise its disastrous influence even as late as the Vichy regime and beyond. Maritain eventually not only established personal relations with him, but for fifteen years was an active collaborator on one of his satellite publications, *La Revue universelle*, to which he contributed regular columns.

This association with Maurras, who made no attempt (quite the contrary!) to disguise his anti-Semitism, was a terrible stain on the career of the Maritains, and proved a source of great embarrassment to them later. Barré treats it too gently and somewhat ironically, but even he wonders how they could have overlooked "the musty smell of anti-Semitism" that pervaded the writings of Maurras and his disciples. Raïssa feebly attempted to cope with this issue by recalling Jacques's exclusive preoccupation with philosophy and theology during these years and her own total absorption in prayer. Maritain himself embarrassedly wrote that he had felt it necessary to follow the directions of his clerical adviser as part of his commitment to the church.

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But Barré finds it impossible to doubt that Maritain's "affinity to Maurrasism corresponded to some of his very real convictions at a time when their relationship was publicly known." Unfortunately, Barré makes no attempt to clarify this surprising transition from committed Dreyfusard and admirer of Jaurès to partisan of Action Française, "a milieu of thought that was the most openly anti-Semitic that could be found." The lack of any explanation may perhaps be linked to his remark that "Maritain's complete correspondence remains inaccessible, according to his specific wish."

This same cleric also urged Maritain, who had begun to lecture at the Institut Catholique, to join in the campaign then being carried on against the influence of Bergson in Catholic circles worried about his undermining of dogma. Maritain's first book, *Bergsonian Philosophy and Thomism*, published in 1913, constituted so harsh an attack that he acquired "a reputation for fanaticism and intolerance" that would cling to him for a very long time. Forty years later, in a preface to the English translation of this work, Maritain expressed regret that he had been so pompously harsh and inflexible toward "that master who had awakened me to the metaphysical desire." Other works of these years, such as his *Three Reformers* (1925)—the three were Luther, Descartes, and Rousseau—continued Maritain's campaign against all those who had contributed to the catastrophic course in which "the human spirit never ceased to become drunk with its creative power and the illusion that it could freely dispose of its own history."

Yet while Maritain's rejection of what he considered the spiritual disaster of modernity seemed to ally him with those who simply wished to restore the past, in fact his neo-Thomism attempted to do quite the opposite. He desired to prove that the ideas of Aquinas could also illuminate the present, and that they could be used, if properly understood, to defend some of the seemingly anarchistic experiments of modern art. The immediate post–World War I years saw a huge explosion of talent and artistic experiment especially in Paris, and the Maritains were very far from being immune to its appeal. Younger artists such as Georges Rouault and the composer Georges Auric formed part of the Bloy circle, and through them the Maritains became acquainted with many of the immensely talented avant-garde personages who swarmed around Jean Cocteau at the café *Le boeuf sur le toit* in Montmartre.

Maritain's *Art and Scholasticism* (1920), a work that first brought him to the attention of a wider public, was an effort to prove that the ideas of Aquinas could help to understand not only the past but the present as well. It is a small book written in a rebarbative style full of scholastic distinctions and terminology; but surprisingly enough it contains a defense of modern artistic experimentation. As Barré writes, "Retrograde to the point of seeming provocative ... [it] was closer to Jean Cocteau and Erik Satie than to Aristotle and Thomas Aquinas." Art is an act of Making, not of Acting or Knowing, and its rules are provided by the task it sets for itself, not by anything external—and so Maritain could see Cubism as the possible infancy of a new classicism, and declare that "Aristotle would have loved Erik Satie." Maritain thus became an unexpected spokesman for that "Jazz Age Catholicism" so excellently described by Schloesser, and which brought Catholicism up-to-date with the modern world.

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Charles Péguy, circa 1910

During these years Maritain also became editor of a new series of books called *Roseau d'or*, or *The Golden Reed*, in which he published Paul Claudel, Jean Cocteau, Julien Green, and especially Georges Bernanos. The latter's novel *Sous le soleil de Satan*, or *Under the Sun of Satan*, created a sensation in 1926, and in the same year the influential critic Albert Thibaudet wrote, in the distinctively non-Catholic *Nouvelle Revue Française*, that the Catholic novel and Catholic literature had now begun to take "a privileged place" in French intellectual discourse. Maritain's list also included, incidentally, a book by his friend the Jewish convert Father Jean de Menasce, formerly an ardent Zionist and a specialist in the history of Iranian civilization. The book was called *Quand Israël aime Dieu*, or *When Israel Loves God*, and it was a celebratory interpretation of Hasidism. Its appearance on Maritain's list may have represented a certain guilty compensation for his anti-Semitic affiliations.

The involvement of the Maritains in this rebirth of Catholic influence was more than purely philosophical and editorial. They organized weekly meetings in their home to discuss the latest issues and ideas, and those in attendance included young students who were later to become notable in one field or another, exiles from their homeland such as the Russian Orthodox philosopher Nicolas Berdyaev and French scholars such as the important Islamicist Louis Massignon and the great Catholic historian of medieval thought Étienne Gilson.

Many turned to Maritain for spiritual consolation, and he and Raïssa became famous (or infamous, depending on the point of view) for having converted Cocteau, the novelist Julien Green, and a number of others to Catholicism. Included in this company was the unsavory and totally unscrupulous Jewish convert Maurice Sachs, who even studied to become a priest. Raïssa was justly suspicious of Sachs (though serving as his godmother at conversion), who had some literary talent and left a book of steamy

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memoirs published posthumously, *Le sabbat*, which disclosed the largely homosexual underside of the drug-filled and alcoholic escapades of so many of the luminaries of this period who turned to the Maritains for comfort and support.

The memoirs amply cited by Barré contain many descriptions of the peculiar sympathetic radiance that emanated from Maritain's personality, often described as "saintly," and as seeming "to have stepped down from the porch of a cathedral." It is this aura that allowed him to exercise so powerful an influence on so many diverse and fiercely independent figures. Maritain himself was soft-spoken, reticent, and even hesitantly awkward; there was nothing at all commanding, impressive, or even self-assured about him. I know this from my own experience, having met him several times during the later years of his life. But there was an all-embracing quality irresistibly conveyed by his personality that I had never encountered before and have not encountered since.

I remember casual conversations during which, it seemed to me, nothing in the world had become more important for him than listening to my trivial words with rapt attention. It was then that I began to understand his remarkable success in making conversions, not only in France but also in the United States (Allen Tate and Caroline Gordon, for example). It also helped to explain his ability to establish firm friendships with an incredible variety of Americans, including not only Walter Lippmann but also John Howard Griffin, the crusading white journalist who traveled through the American South as a black after darkening his skin, and Dorothy Day, the ex-communist founder of the Catholic Workers Movement, and Saul Alinsky, the hard-nosed Jewish labor leader.

In 1926, a crisis arose for Maritain when Maurras and his journal were condemned by the pope and placed on the Index. Maritain had to choose between his loyalty to Catholicism as a religion and his commitment to Maurras, who had never attempted to hide that he was no longer a believer and whose politics was entirely temporal. Maritain wrote a whole book, *The Primacy of the Spiritual*, to explain the importance of not allowing the mission of Christian universalism, which was "to undertake the reconciliation in justice of all human opposites," to be confused with the limited and purely political aims of a particular party.

This break with Maurrasism had the beneficial effect of freeing Maritain from a political commitment that, if we are to judge by what ensued, he had begun to find increasingly troublesome and compromising. From this time on he sought to unite his Catholicism not only with the latest developments in modern culture, but also with an increasing opposition to the ominous triumphs of fascism and Nazism. As for communism, he had no illusions about its totalitarian nature, but the old admirer of Jaurès could not be completely impervious to its appeal. Malraux's novel *Man's Fate* made a great impression on him, and he spoke to Raïssa in 1933 of "the human force that the Revolution represents ... the sense of human misery that the revolutionaries have and that we must acquire." He now began to see his task as being "to awaken 'powerful centers of spiritual and religious renewal' in 'those multitudes of men whom a profound resentment, born of their humiliated and offended human dignity, has turned against Christianity.'"

Taking an active part in the political life of the period, he helped to organize committees to aid the refugees created by Nazism, and joined François Mauriac in inspiring a protest against Mussolini's invasion of Ethiopia, which had been hailed by his old Maurrasian associates as a triumph for Western civilization. He also published a book, *Integral Humanism*, which "threw out the old sacral conception of politics." Instead, while "integral humanism was theocratic ... it was a humanism ... a philosophy of the person and of freedom." During the Spanish Civil War, though denouncing the atrocities on both sides, he participated in a meeting organized by Malraux, then a colonel in the Loyalist Air Force, and was excoriated by name by Franco's son-in-law, his minister of the interior. Horrified by Hitler, Maritain also began to denounce anti-Semitism much more vehemently as anti-Christian. A public lecture condemning anti-Semitism given in Paris in 1939 led to an uproar in which "the speaker was booed and insulted by a part of the audience with cries of 'He's sold out to the Jews.'"

Maritain published a major philosophical treatise, *Distinguish to Unite or the Degrees of Knowledge*, in 1932, and a steady stream of other books concerned with more immediate issues (such as those already mentioned) kept pouring from his pen. His fame had become worldwide, he was invited to lecture everywhere, and in 1933 he traveled to North America for the first time. He joined Étienne Gilson at the Pontifical Institute of the University of Toronto, and then was invited to the University of Chicago at the initiative of the new president Robert M. Hutchins, though the latter was unable to get Maritain appointed to the department of philosophy. Maritain kept returning to teach in the United States for part of the year at Chicago, also establishing relations with the University of Notre Dame, which now harbors the Jacques Maritain Center. The Maritains were in the United States when war broke out in Europe in 1939, and first returned for a visit only in the autumn of 1944.

During the war years, Maritain immediately aligned himself against the Vichy regime of Marshal Pétain and with General de Gaulle, whose father in 1910 had suggested that the young man succeed him as professor of philosophy in the school at which he taught. Suspicious as he had become of politics as a whole, Maritain kept a certain distance from the Gaullist movement (Barré is sharply critical of this reticence), but he busied himself with using his considerable influence to obtain visas for the United States for artists, scholars, and writers who would be threatened. He also participated in the establishment of the École Libre des Hautes Études in New York, taking over its direction for a time, which provided a refuge for many notable French and other scholars, including Claude Lévi-Strauss and Roman Jakobson.

In 1941, Maritain began to broadcast regularly for the Voice of America, and Léon Blum, then a prisoner in Germany, told him how strengthened he had felt on listening to Maritain's words, which somehow he had been able to capture. The deportation to Germany of foreign Jews by the Vichy government filled Maritain with rage, and he thundered against the French replacing their own laws with "the bestial ignominy of Nazi racism." A book on the French defeat, *A travers le désastre* (translated as *France My Country, Through the Disaster*) was criticized by a close friend as not aggressive enough to recruit volunteers for the

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anti-Pétainist cause. But Czeslaw Milosz, reading it in occupied Warsaw, found it inspiring and helpful in countering "all the fables [concerning France] spread about by Nazi propaganda."

At the end of the war, de Gaulle asked Maritain to become the French ambassador to the Vatican, but he agreed only with a great deal of reluctance, because he wished to return to his philosophical pursuits. During his tenure in this post, he worked to block the promotion to the rank of cardinal of French clergymen who had cooperated closely with Vichy, and to advance the minority who had spoken out against Vichy policies. He also tried, unsuccessfully, to obtain a public statement of the collective responsibility of the German people for the war and the genocide. Nor could he persuade the church to offer a public reprobation of the crimes committed against the Jewish people. In the midst of all this, and the exhausting social responsibilities imposed by his position, he wrote *Court traité de l'existence et de l'existant* (*Brief Treatise on the Existence and the Existant*), using the terms made fashionable by Sartre's existentialism. His effort to replace its moral ambiguity with, as he saw it, the true existentialism of Aquinas met with no success, even though, as he ruefully wrote to an American friend, "this is a book into which I put my most intimate thoughts."

RETIRING AFTER THREE YEARS, he returned to teaching in the United States at Princeton University after being refused a chair at the Collège de France. Offered one later to replace Gilson, he turned it down: "the wound was too painful and left a scar that would never completely disappear." Every year he returned to France for three months, renewing old contacts but always looking forward to immersing himself again in American life. The openness and the freedom that he enjoyed here, in a country whose politics displayed no hostility to religion, seemed to him an embryonic realization of that union between the two, without the one trespassing on the other, that he felt to be so important for the future. "Our civilization," he wrote, "will not take up once again its normal march forward unless the Christian inspiration and the democratic inspiration recognize one another and become reconciled."

After the death of Raïssa in 1960, he returned to France to spend his last years in a monastery of the Little Brothers of Jesus, an order that he believed came closer than others to the ideal of St. Francis of Assisi. It is worth noting that the only social function he attended while preparing to leave his Princeton home was the inauguration of John F. Kennedy as the first Catholic president of the United States, to which he had been personally invited.

It is impossible here to do more than mention some of the other books that Maritain wrote during this latter part of his life. In his penetrating *Creative Intuition in Art and Poetry* (1953), he returned to re-evaluate (but by no means to renounce) his old appreciations of avant-garde art. The intended first volume of a history of ethics, *La Philosophie morale* (1960), begins with Socrates and ends with a reverentially discriminating treatment of Bergson. Others dealt with specifically religious-theological issues, such as *De la grâce et de l'humanité de Jésus* (*On the Grace and Humanity of Jesus*, 1967) and *De l'Eglise du Christ* (*On the Church of Christ*, 1970). Another, *Le Paysan de la Garonne* (*The Peasant of the Garonne*, 1966), which contained a critical but by no means hostile discussion of the reforms initiated by the Second Vatican Council, even became a best-seller. As he wrote jubilantly in a letter, "the *Peasant* has risen to just a few degrees below Simone de Beauvoir."

Maritain returned for a last visit to the United States in 1966 to say farewell to old friends and to visit the grave of his sister-in-law Vera buried in Princeton. At the same time he went to see others, one of whom was the poet and monk Thomas Merton. The latter regaled him with recordings of Bob Dylan, "whom he [Merton] considers a great poet, a modern Villon. What a strange scene it is," writes the friend accompanying Maritain, "listening in the monastery of Gethsemani to the hard and expressive voice of a young rebel poet. Jacques likes 'The Gates of Heaven' especially." (This is probably a mistaken reference to "Gates of Eden.") It is with such an appealing image, which seems to unite so many of the seemingly clashing facets of Maritain's remarkable personality, that we can best grasp the secret of his astonishing career. ■

Alan Taylor
The Fire Last Time

NEW YORK BURNING: LIBERTY, SLAVERY, AND CONSPIRACY IN EIGHTEENTH-CENTURY MANHATTAN
By Jill Lepore
(Alfred A. Knopf, 315 pp., $26.95)

IN 1741, NEW YORK CITY HOSTED a great—but largely forgotten—American tragedy. Limited to the southern tip of Manhattan Island, colonial New York was a small but tightly packed city of 10,000 people. Living in about 1,500 houses, mostly wooden, the inhabitants dreaded fire. On March 18, fire consumed the royal governor's mansion and most of the surrounding fort. The inhabitants initially blamed the blaze on a careless workman, but more fires followed in late March and early April. As more homes went up in smoke, the inhabitants suspected a plot by their enslaved Africans, who constituted one-fifth of the city's population.

The fires produced a panic, magnified by the culture's tendency to seek a malign conspiracy behind any alarming event. And paranoids do have enemies. New Yorkers recalled that in 1712 some rebellious slaves had torched a building and killed nine fleeing whites. In retribution, twenty rebels died on the gallows, three at the stake. More recently, New York's newspapers reported dangerous slave revolts elsewhere in the British Empire, including the West Indian island of Antigua in 1736. Three years later in South Carolina, rebellious slaves burned

Alan Taylor is a professor of history at the University of California at Davis and the author, most recently, of WRITING EARLY AMERICAN HISTORY *(University of Pennsylvania Press).*

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seven plantations and killed twenty whites before succumbing to the militia.

Determined to suppress the fires, Daniel Horsmanden, a Supreme Court judge, guided a grand jury investigation that began on April 21, and he elicited a sensational story from Mary Burton, an indentured servant. Her employers, John and Sarah Hughson, ran a scruffy waterfront tavern that hosted slaves, who paid with stolen goods, fenced by the Hughsons. Much worse, she charged, they had recruited dozens of slaves in a plot to burn and plunder the city. The rebels would kill almost all of the white men and appropriate their wives. John Hughson would become king, with a slave named Caesar as his viceroy.

Horsmanden recruited other witnesses who confirmed Burton's story. They included two compliant blacks, Sandy and Fortune, as well as Peggy Kerry, an Irish prostitute employed by the Hughsons and the recent mother of Caesar's child. Coming from the lowest social ranks, none of these witnesses ordinarily enjoyed much credibility in a hierarchical community—but the whites demanded culprits, and Horsmanden was eager to satisfy them. Witnesses and suspects mounted as more than one hundred blacks filled the dungeon beneath City Hall. They quickly recognized that to save their lives—or at least to reduce their death sentences from burning to hanging—they should confess and name their confederates. Nearly half of the city's enslaved residents were eventually implicated.

The trials, which began on May 29, produced a steady stream of hasty convictions and gruesome executions. By the end of August, the New Yorkers hanged seventeen slaves and four whites, including the Hughsons. The magistrates burned another thirteen slaves at the stake. One convict cut his throat to cheat the flames. Seventy more slaves were "pardoned," which meant that they were sold in the West Indies, where plantation labor and the tropical sun killed only a little more slowly and a bit less painfully than burning at the stake. To the very end, most of the executed vigorously asserted their innocence.

In 1741, an anonymous critic noted parallels with the notorious prosecutions of Salem's witches in 1692. Both episodes multiplied suspects and convictions by creating irresistible incentives for desperate confessions that implicated others. Both episodes also sputtered once the confessors ran out of the usual suspects and began to name prestigious gentlemen as co-conspirators. Judges then considered further prosecutions as foolish and dangerous. The anonymous critic remarked, "And if nothing will put an end hereto till some of higher degree & better circumstances & Characters are accused (which finished our Salem Witchcraft), the sooner the better, lest all the poor People of the Government perish in the merciless flames of an Imaginary Plot."

HERE LIES THE ENDURING question: was the plot imaginary? Did paranoia and manipulation kill dozens of innocent people? While the flames consumed convicts, gossip already spread doubts through the community. Outraged by such ingratitude, Horsmanden collected and published in 1744 a voluminous journal of documents and commentary to vindicate his thorough investigation. But the journal failed to stem the emerging consensus—consolidated by century's end—that there was little or no conspiracy beyond the hysterical imaginations of panicked whites.

That view prevailed among scholars until the 1960s and 1970s, when more radical historians sought evidence for active black resistance to slavery. Their emphasis on black "agency" rejected the older view of the crisis of 1741 that seemed to reduce blacks to passive victims. Instead these scholars found a widespread conspiracy by defiant slaves.

But the mystery defies easy solution, because the sources are so tricky. Victors usually write our history, especially when the victims are slaves, and doubly so in cases of suspected rebellion. Historians of the conspiracy of 1741 are both cursed and enriched by Horsmanden's dense journal. He provides unprecedented insight into the colonial prosecution of a supposed slave revolt—but he was also covering his own tracks.

Historians long to get beyond Horsmanden's printed words into some original sources, into manuscripts. Alas, a later fire consumed the city's official court records, leaving but a partial copy of the earliest confessions and trials. Only a few issues survive from the city's two newspapers for that fiery year, and they provide scant information. Surviving letters are also few and limited to elite whites. Generally illiterate, the slaves produced no writing that survives to give their side of the story. Consequently, historians have relied almost exclusively on Horsmanden's journal to tell varying stories of the fires, wooden and human, of 1741.

NOW AN ESPECIALLY INSIGHTful and innovative historian brings a new perspective—and new sources—to bear on the study of this dark episode. Jill Lepore is especially qualified to probe beneath the treacherous surfaces of Horsmanden's account. In 1998, she published *The Name of War: King Philip's War and the Origins of American Identity*, a remarkable book that dealt with a similar problem from colonial America: how to recover the Indian experience of defeat through the distorting lens of the vaunting accounts produced by their conquerors in New England. In those self-serving accounts, Lepore found faint resonances of the native voices that the colonists had tried to silence.

As in her previous books, here Lepore again applies her considerable talents as a close and thoughtful reader of treacherous texts. Inevitably, though, she must speculate to fill yawning gaps in the surviving records. For example, Horsmanden's journal mentions no torture to loosen suspects' tongues. Was there no torture? Or did he just suppress it from the record? Lepore concludes that "there is every reason to believe but no way to prove that at least some slaves in that dungeon below City Hall were beaten, maybe very badly; just as there is every reason to believe but no way to prove that the court never ordered it." No one seeking historical certainty will find it in the records for a slave revolt.

In addition to her skills at cultural interpretation, Lepore also brings a refreshing new dimension to her scholarship and to the study of this subject by embarking on the painstaking detail work of social history. She culls names and locations and relationships from maps, census lists, and tax enumerations to reconstruct the population and its distribution in New York City. By recovering the city's social context, Lepore seeks "patterns in the conspiracy, the fires, the confessions, and the trials that were otherwise unobservable simply by reading Horsmanden's *Journal*."

Her model comes from *Salem Possessed: The Social Origins of Witchcraft*, a book published in 1974 by the historians Paul Boyer and Stephen Nissenbaum. By plotting the divergent locations of ac-

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cused witches and their accusers, Boyer and Nissenbaum developed a new explanation for the motives behind the notorious trials of 1692. They noted that the accused tended to live on a commercialized thoroughfare, while the accusers were rustics evidently expressing their anxiety at social and economic change.

Lepore does not find a pattern quite that neat and simple in the New York of 1741. She makes a half-hearted stab by briefly suggesting a partisan political division. She hints that the fires hit members of the Court Party, who supported the governor, while the prosecuted slaves tended to belong to his opponents in the Country Party. But she does not develop that point because the pattern has too many holes. The court prosecuted none of the slaves belonging to James Alexander, the lawyer who led the Country Party. But the judges did relentlessly hound to the gallows Othello, the cherished manservant to the chief justice, James DeLancey, then a key supporter of the governor. In fact, as Lepore also notes, the Court Party bent over backward to enlist the Country Party in support of the prosecutions—and to avoid appearing partial by protecting its own slaves.

INSTEAD OF FINDING A SINGLE, smoking firebrand of explanation, Lepore's social sleuthing provides something even better: the most vivid and telling description of life and death in a colonial seaport yet produced by a historian. By crafting a rich social context, Lepore illuminates the horrific decisions of people with power over the bodies of the vulnerable. She rejects the romantic nonsense that northern colonists treated their slaves indulgently and far better than did southern masters. Urban slavery was especially hard on women, Lepore concludes: "Most enslaved women were dead by forty ... they died of disease or complications of childbirth, exacerbated by poor nutrition and years of toil. Some were simply driven mad."

Assembling telling details, she evokes a city of extremes, of wealth and poverty, power and powerlessness, and beauty and filth—all crowded and jumbled together near the wharves and the ships that linked New York to Europe and to Africa. She writes evocatively. When her narrative turns to summer, Lepore reports, "In the streets, hogs sweated and dogs panted, seeking the shade of doorways and market awnings and the smooth coolness of the marble steps of fashionable houses, only to be shooed away by broom-wielding servants and house slaves." The visceral illuminates the social as a shared heat reveals pervasive inequality. Her description then temporarily softens into idyll: "At dusk, couples strolled on the Bowling Green and dined on lobsters and watermelons." But then the sudden twist: "Meanwhile, on a small island ... the rotting corpses of John Hughson and Caesar hung from chains, stinking and oozing in the sun ... long since found by birds, beetles, flies, and worms, pecking, sapping, gnawing." The heart of darkness is revealed in the land of lobsters, watermelons, and marble steps.

Lepore pays exquisite attention to paradox and irony. Although the social hierarchy separated people conceptually in severe gradations of property and status, the urban geography compelled them to live cheek by jowl. In white-owned homes, blacks occupied attics, cellars, or adjoining sheds: "whites and blacks lived, literally, on top of one another." When the judges ordered a systematic search of the entire city, they found no one considered a stranger—testament to the intimacy of people who watched one another daily.

Lepore reveals that urban slaves traveled more often and more widely within the city than did their owners. Although laws rigorously restricted the movement of blacks, their masters required them to run errands throughout New York, early in the morning and long after dusk. Separated from lovers and children, they could experience family ties only by surreptitious travel, usually at night. "All day and into the night," Lepore observes, "black men walked the streets of the city." In the process, they learned more gossip more quickly than did the white folk, slumbering in comfort and illusions. Sent to fetch kegs of clean water from city wells, the slaves could plot as well as joke.

In the colonies as in Europe, eighteenth-century communities typically combined inequality and intimacy, patrician arrogance and plebeian mockery, draconian laws and lax enforcement. For want of any formal police or much bureaucracy, the elites had to let a lot slide—until they felt threatened. But then they inflicted a bloody and conspicuous justice meant to make enough grim examples to restore social order—until the next alarming surge of disobedience.

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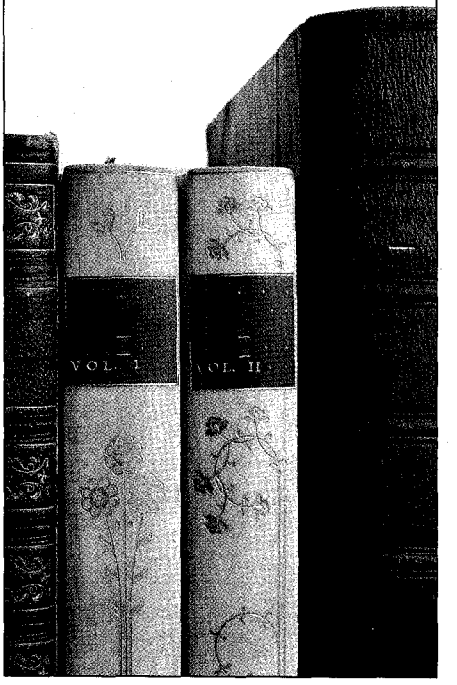

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The occasional, dramatic, and summary infliction of public pain maintained a hierarchy that routinely allowed some autonomy, even by slaves. When the masters were in a bloody mood, nothing but confession might save a slave's life, and only at the expense of other lives named.

NOR WERE SLAVES ALONE IN their vulnerability. A white man named John Ury had the unfortunate combination of too much learning, too little property, and no local patrons. An educated drifter, he came to New York City to teach school—at the wrong time, as confessors desperately cast about for more names. Alas, he fit the profile expected of a covert Catholic priest in secret service to the Spanish enemy, and he had no local gentleman to vouch for him. Jailed and tried, he fell victim to the usual witnesses, who suddenly recalled that Hughson took his orders from Ury, who behaved just like a treacherous priest. Conducting his own defense, Ury punched gaping holes in the witnesses' stories, but in vain. Convicted by the jury, he protested his innocence all the way to the gallows.

The last man executed for this plot, Ury helped to halt the prosecutions by providing an archconspirator. Further trials and executions seemed unnecessary to growing numbers of slaveholders, who grumbled at losing so much valuable property. Once key supporters of the trials, the masters became critics by late summer, as the suspicious fires stopped and began to recede in memory. Moreover, Burton and other key witnesses began vaguely to mention gentlemen seen with Hughson and Ury. Suddenly their testimony seemed less credible. Although Horsmanden longed to persist, he lost clout after the return in July of the long-absent chief justice James DeLancey. Once DeLancey took charge, the focus of the trials shifted toward Ury and away from the blacks—to Horsmanden's dismay. By sacrificing a convenient white man, DeLancey halted the swelling bloodletting that had claimed his favorite slave, Othello.

Initially, Lepore leans toward blaming the mess primarily on Horsmanden, who was especially vicious in his contempt for the enslaved Africans. In sentencing one slave to death, he ranted at all blacks:

> Such worthless, detestable Wretches are many, it may be said most, of your Complexion, that no Kindness can oblige ye; there is such an Untowardness, as it should seem, in the very Nature and Temper of ye, that ye grow cruel by too much Indulgence: So much are ye degenerated and debased below the Dignity of Humane Species.

Indeed, Horsmanden preferred dogs as far more grateful, loyal, and protective:

> Such is the *Fidelity* of these *dumb Beasts*; but ye, the *Beasts of the People*, though ye are cloath'd and fed, and provided with all Necessaries of Life, without Care, in *Return for Blessings ye give Curses, and would scatter Firebrands, Death and Destruction around them*, destroy their Estates and *butcher* their Persons. Thus monstrous is your Ingratitude!

Lepore loathes Horsmanden as a political hack, ruthless opportunist, and pompous elitist. She mocks his "stare that was at once wounded and meant to intimidate" and his jurist's wig, which "bulged out over his ears, like two cottony rabbit tails." She finds just deserts in his miserable ending as a lonely old man who outlived his two wives, produced no children, and made few friends. He became the pathetic butt of public ridicule. "Daniel Horsmanden lived out his final days in a world that despised him," Lepore writes in grim satisfaction. A loyalist in a revolutionary war, he lingered in British-occupied New York City until felled by a stroke in 1778 at the age of eighty-three. She stops just short of reporting that he landed in eternal hellfire—the perfect sentence for a man who caused so many blacks to burn.

AT FIRST, LEPORE MAKES THE case that Horsmanden constructed the conspiracy from his own fantasies about blacks and from his manipulation of vulnerable prisoners and a credulous public. Thoroughly managing the investigation, he concocted remarkably similar confessions from the garbled words of terrified prisoners. Lepore concludes that "he could fix whatever meanings he liked to the words spoken by the 'Creatures' who stood before him. He could write whatever 'Confession' he liked . . . and no one would oppose him."

Horsmanden initially made John Hughson the arch conspirator by rendering monstrous some tales of ritual feasting at his suspicious tavern. In mockery of genteel Freemasonry, Hughson and his black gang apparently conducted their own initiation ceremonies, replete with electing a king and joking about burning the city. "This plot was real—it happened—but it was also fake; it was meant as mockery," Lepore explains. Sadly, Horsmanden did not get the joke. Lacking any sense of humor, he mistook these wild stories with literal and lethal seriousness.

But then Lepore reveals another, more legitimate plot that Horsmanden misunderstood and obscured by his relentless focus on Hughson's tavern. By closely reading some of the slave confessions, Lepore finds some slaves who really were plotting, but without involving Hughson or any other whites. Sent by their masters to fetch water at a well belonging to Gerardus Comfort, these real plotters rallied around Jack, an especially defiant African who belonged to Comfort. These resolute slaves did plan to kill their masters by burning their homes. "Like Hughson's Plot, the 'Negro Plot' was real—it happened—but it was no prank," Lepore concludes. In a move of interpretive and narrative brilliance, Lepore gradually shows her full hand, which contains both a fake and a real plot.

Horsmanden jumbled the two plots and subordinated the real to the parody because he insisted that only a white man could conceive and lead such an ambitious conspiracy. Lepore's motive cuts in the opposite direction. By distinguishing the two plots, she can have her historian's cake and eat it too. The Hughson Plot damns Horsmanden as a vicious manipulator of black victims, while the Negro Plot attests to black agency in resisting slavery.

IN ADDITION TO EXPLORING THE local mystery of the slave conspiracy, Lepore addresses a far grander puzzle: how eighteenth-century Americans could develop a repressive slave system along with a passionate celebration of personal liberty. Historians used to hasten past that paradox, dismissing slavery as an ugly exception to a happy story of progressive liberty for everyone who mattered (that is, for white men). This willful blindness diminished after the publication in 1975 of Edmund S. Morgan's *American Slavery, American Freedom: The Ordeal of Colonial Virginia*. Morgan argued that slavery

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for blacks became essential to the precocious American development of liberty for white men. As a master race, they could feel sufficiently equal to ground politics in popular sovereignty. No exception to the American rule, slavery lay inextricably and tragically intertwined with the emergence of republican government.

Some critics wondered if Morgan's analysis of Virginia could fit the northern colonies, where slaves were fewer. Lepore supports and extends Morgan by investigating the link between race slavery and white republicanism in a northern colonial city. She wishes to "place both liberty and slavery, and not just one or the other, at the center of American history." New York's newspaper writers effusively celebrated the liberty of Englishmen, which they contrasted with the tyranny endured by other Europeans. Without any sense of irony, colonists characterized as "slavery" any restraint on the autonomy of white men—and they depicted that slavery as a fate worse than death. Lepore marvels that "everywhere, liberty was passionately celebrated, and slavery just as passionately condemned, by ... Americans who owned Africans." She examines "how one kind of slavery made another kind of liberty possible in eighteenth-century New York."

To solve that bigger American mystery, Lepore links the tragedy of 1741 with a more famous and edifying colonial story: the celebrated trial of John Peter Zenger in 1735. A newspaper publisher, Zenger worked for James Alexander, who led the opposition to the royal governor, William Cosby. The thin-skinned Cosby prosecuted Zenger for seditious libel. According to the common law, a libel was any publication that showed disrespect for government. And the truth was at best irrelevant to the menace of a libel. To assist the prosecution, Cosby enlisted none other than Daniel Horsmanden, then an ambitious young lawyer and a recent immigrant from England. Zenger secured a better lawyer, Andrew Hamilton, who persuaded the jury to defy the judges by accepting two radical new legal propositions: that truth defended a publication against libel; and that jurors could determine law as well as facts in a libel case.

Why?

Because the herons are nesting in the woods,
because the grass is greener each hour, because
the choices in my dreams are so numerous they're
useless, because my body's rhythm won't intersect
the day's, because the stunted hyacinth which
opened too soon are growing in spite of themselves,
fleshing out like teenage boys who suddenly own
shoulders and chests, because daffodils interrupt
the bare earth, because the garden waits for me
like a sullen child, an awkward bride, because
the sky can't decide whether it's blue or gray,
a drooping or an auspicious eye, because all
of it is moving so fast—clouds, earth, life—,
because language is a screen masking disbelief
in what it reveals, because what I love is
fragile as life, indifferent to me as the ages.

SANDRA KOHLER

[redacted]

Traditional history highlights the Zenger case because it so perfectly fits the preferred narrative that colonial America was an especially progressive and modern society. According to this story, by developing greater liberty than in England, the colonists rendered inevitable a republican revolution for independence. But conventional history says far less about the medieval readiness of those same colonists to burn slaves at the stake six years after the Zenger trial.

By linking the two cases, Lepore pursues Morgan's game. She insists that Horsmanden seethed at the humiliation of his legal defeat in 1735. As an ambitious member of the governor's Court Party, Horsmanden also resented the rise of a political opposition—previously considered to verge on treason. New York's bitter partisanship nearly led to civil war in 1736, when Cosby died and the Court and Country parties armed themselves in support of rival claimants to the interim governorship. The colony narrowly averted bloodshed, thanks to the timely arrival from England of a new and legitimate governor.

Seeking personal and political vindication for his conduct in 1735, Horsmanden aggressively prosecuted the alleged slave conspirators in 1741. He longed for public applause as the colony's most vigilant defender, and he hoped to demonstrate that political opposition fatally weakened social order, inviting slaves to plot against the lives of their masters. Lepore insists that Horsmanden "attempted to douse party flames by burning black men at the stake."

Put on the spot, the Country leaders quickly agreed that the white elite should unite against the black threat. Led by Alexander, the opposition lawyers promised to assist the prosecutions. Consequently, no defendant had an attorney to challenge the implausible testimony assembled by the prosecution. After the near–civil war of 1736, New York's elite found a new solidarity in 1741.

Although political factionalism soon revived, Lepore insists that it remained more restrained and became less significant than during the late 1730s. The political contestants held back from a fear that violent divisions among whites would invite another slave revolt. "While they ebbed and flowed, fear of black rebellion and the embrace of opposition, like liberty and slavery, traveled with the same tide," she remarks. Dread of another slave revolt acted as a governor on the engine of democratic politics, legitimating a milder form of partisanship. "The threat of black rebellion," Lepore observes, "made white political opposition palatable, even as it established its limits and helped heal the divisions it created." She concludes that "slavery destabilized—and created—American politics."

But if any contemporaries said so, Lepore does not muster their words as evidence. And it is not at all clear that New Yorkers learned to keep their politics within the bounds of moderation. If they flirted with civil war in 1735, they made the real thing in 1775, for the American Revolution was especially bloody, divisive, and destructive in New York. The presence of slavery did nothing to unify New York's political elite in the civil war of revolutionary America.

In the end, Lepore's answer to the big American puzzle is intriguing—but it is less compelling than her vivid examination of the local mystery wrapped around the tragic events of 1741. Her great accomplishment lies in her intense depiction of life and death in a colonial city gripped by a social claustrophobia. With a lacerating attention to detail, Lepore reveals the tragedies endured and inflicted in a colonial society that combined freedom and slavery in crowded towns of stark cruelty and unchecked ambitions. ■

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WASHINGTON DIARIST

Basketball Diaries

TWO LOCAL HEROES STAND out from my childhood in El Paso, Texas. The first is the weatherman for the local ABC affiliate, John Fausett. In 1983, the year my family moved to Texas, Fausett predicted snow—in April. The local meteorological community sneered. But Fausett stuck to his guns, and he was right. The next few days brought 17 inches. For years after the fact, the station would run promos recounting this feat—a lesson to my generation about integrity and the power of independent thinking.

THE SECOND IS DON HASKINS, THE longtime basketball coach at the University of Texas at El Paso (UTEP). Haskins has recently achieved fame outside West Texas thanks to the feature film *Glory Road*, which revisits his team's long-shot national championship in 1966. But there was never any question about Haskins's legendary status in El Paso. Undersized prepubescents like myself would make the hajj to his annual basketball camp from all corners of the Southwest. The point wasn't so much to meet the Bear—no one would be so presumptuous. It was to get your hands on a bright orange Don Haskins Basketball Camp T-shirt, which marked you as forever worthy of respect. I kept mine until college.

GLORY ROAD HAS PROVOKED A MINI-controversy surrounding the historical significance of the 1966 season. Haskins was the first coach to start an all-black roster in an NCAA title game. That the Miners beat Adolph Rupp's all-white Kentucky squad, at a time when elite Southern schools excluded black players, has prompted the elders of basketball to proclaim it a watershed moment. This has, in turn, led sticklers to point out that few of the players or coaches involved saw it that way and that many non-Southern colleges were already recruiting black players. Fair enough. Still, you rarely recognize an iconic moment until after the fact. And it didn't take long for the evidence to surface. According to UTEP's Charles Martin, author of a forthcoming history of discrimination in college sports, Vanderbilt recruited the Southeastern Conference's first black basketball player about six weeks later.

THE REAL PROBLEM WITH THE MOVIE IS its explanation for how our sleepy West Texas town produced the team that demolished the color barrier in college basketball. *Glory Road* casts its lot with serendipity: UTEP—then known as Texas Western—happened to hire Haskins; Haskins desperately wanted to win; the only talented players he could lure to a third-rate school in the middle of nowhere were black. The movie is heavily invested in this explanation, since it underscores the story's unlikely quality. At one point, the Haskins character is recruiting a black player from Gary, Indiana. The recruit's mother is clearly concerned about sending her son to Texas. The viewer, who so far has only seen a few dusty buildings and some good ol' boys, can see the punch line coming. Haskins swallows hard and explains that the city does have a certain "cosmopolitan" quality. The next scene cuts to the confused recruit riding through the desert on a nearly empty bus.

BUT "COSMOPOLITAN" IS ACTUALLY closer to the truth than the movie gives El Paso credit for. The city basically *had* to accommodate itself to multiculturalism, since its Latino population was always so significant (well over 50 percent) and the border that separates El Paso from Juarez, Mexico, was so porous. In his just-published cultural history of El Paso, *Ringside Seat to a Revolution*, David Dorado Romo suggests that most of the city's retailers have historically been too dependent on Latino consumers to discriminate against them overtly. This dates back to the revolutionary days, when Pancho Villa would order shoes and khakis by the tens of thousands from a local dry-goods store. This dynamic worked in the other direction, too. With more than one million people, Juarez was twice the size of El Paso when I lived there; in some ways, it seemed more sophisticated. In 20 minutes, you could drive across the border to some elegant but inexpensive seafood restaurant, where you'd be surrounded by other Americans and affluent Mexicans.

THESE DETAILS ARE AT ODDS WITH THE Huntington-esque clash of civilizations that must come to mind when most Americans think of the border region. But it's not border towns where fears of an alien invasion are escalating. It's the cities hundreds of miles away, where immigrant populations have become visible more recently. It's telling, for example, that most of the Minutemen vigilantes who have patrolled the border near El Paso came from places like Dallas and Denver. I am swarthy enough to have been mistaken for a Latino fairly regularly in El Paso. But the only time I encountered racism of any kind was when my soccer team played a team from Clovis, New Mexico, 250 miles to the northeast. I happened to brush up against a Clovis player, who, in what apparently passes for sportsmanship in small-town New Mexico, protested, "C'mon, spic."

NOR WAS IT JUST ANGLO-LATINO RELATIONS. Romo writes in his book that, in the early twentieth century, blacks, whites, Chinese, and Mexicans all mixed easily in South El Paso, the district abutting the border. Black soldiers who fought Villa under General "Black Jack" Pershing were hailed by El Pasoans as heroes. And, though El Paso fell under Texas's Jim Crow regime, enforcement was generally more lax than elsewhere in the state. It's not surprising that El Paso became the first Texas city to bar discrimination in public places—two years before the Civil Rights Act.

EL PASO CERTAINLY WASN'T BLAMELESS when it came to race. Elite institutions like law firms didn't get around to making many Latinos partners until the 1980s. And, as *Glory Road* correctly illustrates, Haskins's unorthodox recruitment strategy raised its share of eyebrows when it first became apparent. (Though the Miners' roster had featured at least one black player almost every year since 1956.) But one has to wonder where else in the Sun Belt a Division I coach could have handed most of his scholarships to blacks in the mid-'60s. I don't mean to deny Don Haskins his glory. I just think El Paso deserves a share of it.

NOAM SCHEIBER

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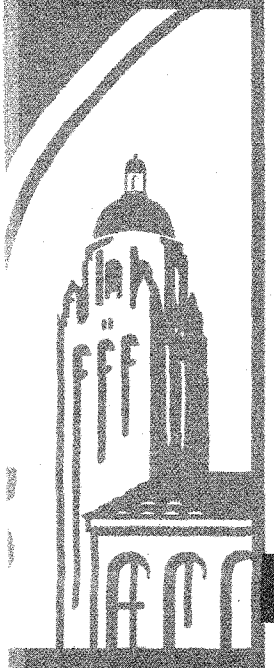

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In the new issue of the Hoover Digest . . .

The New Realism

Our only antidote to Islamic radicalism and terror

For all the media hysteria and the indisputable errors of implementation, the Bush Doctrine is, in fact, moving ahead. I continue without reserve to support our efforts in Afghanistan and Iraq and our pressure for reform in the Middle East at large. Not because the Bush Doctrine follows some predetermined neoconservative agenda—I thought the January 28, 1998, letter by the Project for the New American Century, urging the removal of Saddam Hussein, was ill-conceived at the time—but rather because, in a post-9/11 age, muscular idealism is the new American realism, the one antidote to Isalmic radicalism and its appendages of terror.

—Victor Davis Hanson

Katrina and School Vouchers

How to rebuild New Orleans's schools—and transform the city's system of education

Most New Orleans schools are in ruins. This is a tragedy. It is also an opportunity to reform the educational system. Rather than simply rebuild the destroyed schools, Louisiana, which has taken over the New Orleans school system, should empower parents by providing them with vouchers. Parents would then be free to choose the schooling they considered best for their children. Such a reform would meet emergency needs: Vouchers would be usable by the students who are now scattered all over the country to purchase educational services wherever they are. More important, the vouchers would encourage private enterprise to provide schooling. Is there any doubt that the private market would provide schooling for children returning to New Orleans faster than the state?

—Milton Friedman

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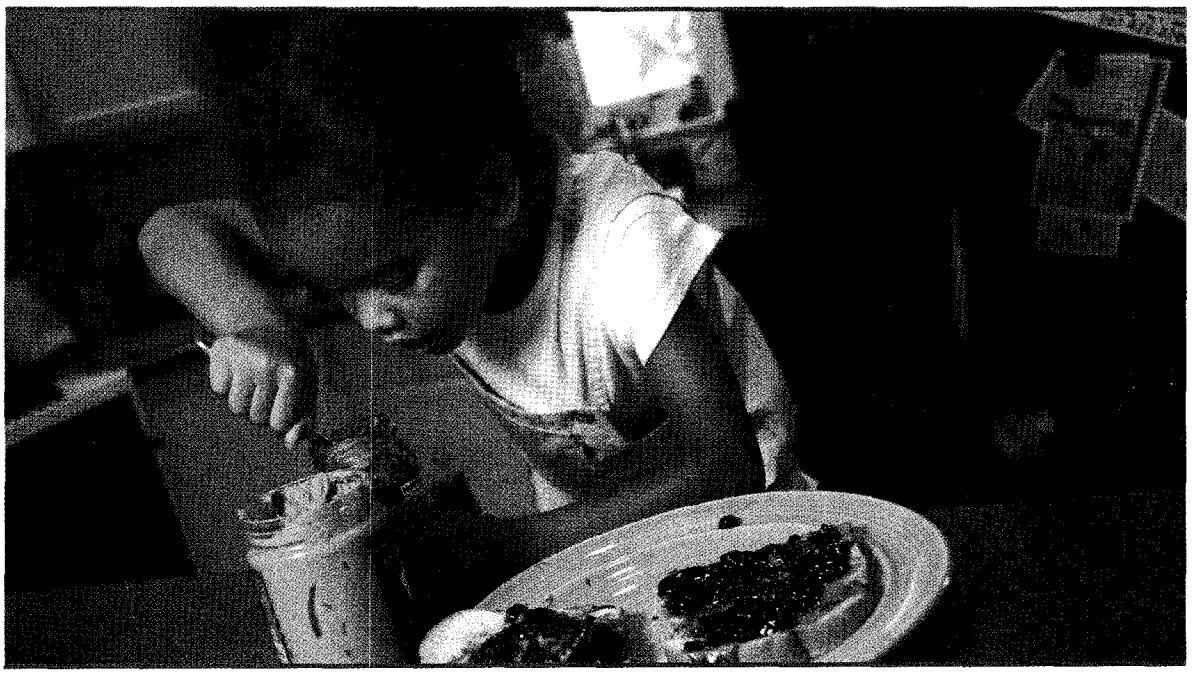

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